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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 926

[Docket No. FV01–926–1 FR]

Proposed Data Collection, Reporting, and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new Part 926 in the Code of Federal Regulations which requires persons engaged in the handling or importation of fresh cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) not subject to the reporting requirements of the Federal cranberry marketing order (order) to report sales, acquisition, and inventory information to the Cranberry Marketing Committee (Committee), and to maintain adequate records on such activities. The establishment of the data collection, reporting, and recordkeeping requirements for entities not subject to the order is authorized under an amendment to section 8(d) of the Agricultural Marketing Agreement Act of 1937. The additional information is needed by the Committee to make more informed recommendations to USDA for regulations authorized under the cranberry marketing order. This rule also finalizes the Agricultural Marketing Service's intention to request approval of the new data collection and reporting requirements by the Office of Management and Budget.

EFFECTIVE DATE: February 11, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 6C02, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA,1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

This rule is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], and as further amended October 22, 1999, by Pub. L. 106–78, 113 Stat. 1171, hereinafter referred to as the ''Act''.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This action is necessary to implement authority on cranberry data collection consistent with a 1999 amendment to section 8(d) of the Act. If a cranberry order is in effect, the amendment authorizes the Secretary to require persons engaged in the handling or importation of fresh cranberries or cranberry products (including producer-handlers, second handlers, processors, brokers, and importers) to provide to the USDA certain information including information on sales, acquisitions, and inventories of fresh cranberries or cranberry products. Under the provisions of Part 926, such persons include handlers, producer-handlers, processors, brokers, and importers. Under the rule, the Committee will collect such information.

According to the Committee, the number of end users of cranberries and cranberry products has increased in recent years. This has increased the number of entities in the marketing chain acquiring, selling, and maintaining inventories of cranberries and cranberry products produced domestically and outside the United States. Significant quantities of cranberries and cranberry products are now being marketed by handlers, producer-handlers, processors, importers, brokers, and others not subject to the reporting requirements of the cranberry marketing order (7 CFR Part 929). The cranberry marketing order authorizes the Committee to obtain information on sales, acquisitions, and inventories of cranberries and cranberry products from handlers regulated under the order. Such handlers are those who can, freeze, or dehydrate cranberries produced within the production area, or who sell, consign, deliver, transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States and Canada.

Prior to the 1999 amendment of the Act, the Committee and USDA did not have the authority to obtain information from entities not subject to the reporting requirements of the order. The 1999 amendment provides authority for USDA to expand the Committee's information gathering capability. With more complete information, the Committee would be able to make better-informed regulation recommendations to USDA. The Committee would also publish periodic reports aggregating the data on cranberry and cranberry products for use by all members of the industry.

Prior to the mid-1990's, the majority of cranberry inventories were held by handlers subject to the order, and the Committee was able to account for practically all of the cranberry and cranberry product inventory under the order. Under § 929.9 of the order, the term handler is defined as any person who handles cranberries. Handle means to sell, consign, deliver or transport

(except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area and any point outside thereof in the United States or Canada (7 CFR 929.10). However, with increased domestic production and imports of cranberries, the number of entities not regulated under the Federal cranberry marketing order has expanded to include handlers, producer-handlers, processors, brokers, and importers who are not subject to the mandatory reporting requirements of the cranberry marketing order. Therefore, the Committee does not have complete information on sales, acquisitions and inventories of cranberries. Allowing the Committee to collect this information will help it make better informed regulation recommendations to USDA.

Section 929.46 of the cranberry marketing order requires the Committee to develop a marketing policy each year prior to May 1. Currently, in its marketing policy discussions, the Committee projects expected supply and market conditions for an upcoming season, based on information provided by growers and, particularly, handlers who are regulated under the order. These projections include an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season). The Committee believes that its marketing policy is limited in some respects because it does not have the ability to include sales, acquisitions, and inventory reports from all segments of the cranberry industry.

Increased production, stagnant demand, and high inventory levels have compounded the problem of unreported inventories. With increased production and stagnant markets, the industry is producing far more cranberries than needed for current market needs. This situation has led to higher inventory levels. However, the Committee's inability to obtain needed information on cranberry sales, acquisitions, and inventories from entities not regulated under the marketing order has prevented it from obtaining complete information from all segments of the industry. With understated sales, acquisition, and inventory information, the Committee has been limited somewhat in making recommendations under the marketing order.

The ability to closely monitor levels of sales, acquisitions, and inventory is critical to the Committee in making more thorough recommendations. The 1999 amendment to the Act provides a means for collecting this information.

Section 8(d)(3) of the amended Act specifies that if an order is in effect with respect to cranberries, USDA may require persons engaged in the handling or importation of cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) to provide such information as USDA considers necessary to effectuate the declared policy of the Act (which is to promote orderly marketing conditions and improve returns to producers), including information on acquisitions, inventories, and dispositions of cranberries and cranberry products. The amendment allows USDA to delegate to the Committee the authority to collect sales, acquisition, and inventory data from persons, other than regulated handlers under the marketing order, engaged in the handling or importation of cranberries. Under this proposal, the Committee would collect such information. Typically, marketing order committees collect information and require record keeping to ensure that USDA can verify handler reports. Additionally, the Committee also compiles collected information in its aggregate form to use when discussing cranberry supplies, inventories, and market strategies during its marketing policy discussions. This rule will assist the Committee in making more informed marketing recommendations.

A new Part 926 will be added to the regulations to authorize the Committee to collect data from such entities. New Part 926 will define terms and establish rules and regulations relative to the reporting and recordkeeping requirements necessary to effectuate the declared policy of the Act.

Several examples are listed below as to how data collection currently is conducted under the marketing order and how it will operate under the new data collection process. For instance, a grower harvests and delivers cranberries to a handler regulated under the cranberry marketing order. The regulated handler sells the cranberries to a processor. The regulated handler reports to the Committee the name, address, and amount of cranberries sold to the processor on a Handler Inventory Report—Supplement Form (HIR–SUP), and that completes the current marketing order data collection process. Under the new data collection process, the Committee, noting information used from marketing order reports to identify newly regulated entities, will send a report form (Handler/Processor Cranberry Inventory Report Form; HPCIR A–D) to the processor. The processor will complete the form by indicating names, sources, and amounts of domestic/foreign barrels of cranberries acquired, domestic/foreign sales, and beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) and submit the report form to the Committee.

In another example, a regulated handler sells cranberries to a broker. The broker sells the cranberries to three processors. The Committee receives the initial information (barrels acquired, sold, and in inventory) from the regulated handler and that ends the current marketing order data collection process. Under the data collection process, the Committee will also contact and send a report form (Importer Cranberry Inventory Report; Form ICIR A–D) to the broker to track the cranberries to the three processors. This form filed by the broker will provide the Committee with names, sources, and amounts of cranberry barrels acquired, amount sold to and received by the broker, processor and handler, and the beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) held by the broker. After receiving the broker's report, the Committee will send a Handler/Processor Cranberry Inventory Report Form to each of the three processors to complete and return to the Committee.

In a third example, a non-regulated handler acquires cranberries (imports or domestically produced cranberries from a non-marketing order production area). The non-regulated handler is outside the scope of the marketing order and thus, not required to report to the Committee under the current marketing order reporting process. However, through the information supplied from other producer-handlers, importers, processors and brokers, the Committee might be able to identify the non-regulated handler and send him/her a Handler/Processor Cranberry Inventory Report Form. The non-regulated handler will complete the form by indicating names, sources, and amounts of domestic/foreign barrels of cranberries acquired, foreign/domestic sales, and beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) and submit the report form to the Committee.

In the last example, a broker imports cranberries into the United States. The broker is outside the scope of the marketing order and not a regulated handler. Thus, there is no mandatory reporting or recordkeeping requirements that he/she has to meet. Under the new data collection requirements, the importer will be required to submit quarterly reports (on an Importer

Cranberry Inventory Report Form CIR A–D) to the Committee. This form is to be filed by an importer to provide the Committee with names, sources and amounts of cranberry barrels imported, amounts sold to and received by the broker, processor and handler, and the beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) held by the importer. Once that information is obtained, the Committee can contact the individuals/firms receiving the imported cranberries and have them report on the distribution.

All of these reports will be on the same reporting cycle (4 times a year or quarterly) as regulated handlers under the marketing order. Handlers, producer-handlers, processors, brokers, and importers will report any/all cranberry transactions that occurred during each of the reporting cycles. The purpose of this action is to provide the Committee with the ability to account for cranberries in the marketing pipeline after they have been sold by the regulated handler or if imported, brought into the United States.

All cranberries and cranberry products will be covered. This includes fresh cranberries, frozen cranberries, and cranberry concentrate. Currently, if a handler regulated under the order has juice, sauce or other finished cranberry products in inventory, the handler is required to determine the barrel equivalency of cranberries contained in those products and report this as inventory. Handlers, producer-handlers, processors, brokers, and importers will be required to do the same.

Data collection requirements will not apply once fresh cranberries or cranberry products reached retail markets. For example, a regulated handler (handler A), sells concentrate to processor B. Processor B uses the concentrate to bottle private label juice. The product is shipped to a wholesale/retail distribution center. The Committee will receive an initial report from handler A and subsequently from processor B. Processor B will continue to file reports for each cycle that the concentrate and cranberry products remained in his/her possession. The reporting requirement extends up to, but does not include, the retailer level.

Failure on the part of handlers, producer-handlers, processors, brokers, and importers to comply with the new data collection and recordkeeping requirements could lead to enforcement action, including the levying of penalties provided under 8c(14) of Act against the violating person or entity. False representation to an agency of the United States in any matter, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.201] as those having annual receipts less than $5,000,000, and small agricultural producers are those with annual receipts of less than $750,000. There are about 20 handlers currently regulated under Marketing Order No. 929. In addition, there are about 1,250 producers of cranberries in the production area. Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition.

In 2003, a total of 39,400 acres were harvested with an average U.S. yield per acre of 155.1 barrels. Grower prices in 2003 averaged $31.80 per barrel. Average total annual grower receipts for 2003 are estimated at $155,203 per grower. Of the 1,250 cranberry producers in the marketing order production area, between 86 and 95 percent are estimated to have sales equal to or less than $750,000. Few growers have sales that exceeded this threshold in recent years.

Under the marketing order, five handlers handle over 97 percent of the cranberry crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition.

The remainder of the crop in the marketing order production area is marketed by about a dozen producer-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these producer-handlers, all are considered small businesses.

Cranberries are produced in 10 States under Marketing Order No. 929, but the vast majority of farms and production is concentrated in Massachusetts, New Jersey, Oregon, Washington, and Wisconsin. Average farm size for cranberry production is very small. The average across all producing States is about 33 acres. Wisconsin's average is twice the U.S. average at 66.5 acres, and New Jersey averages 83 acres. Average farm size is below the U.S. average for Massachusetts (25 acres), Oregon (17 acres) and Washington (14 acres).

Small cranberry growers dominate in all States: 84 percent of growers in Massachusetts harvest 10,000 or fewer barrels of cranberries, while another 3.8 percent harvest fewer than 25,000 barrels. In New Jersey, 62 percent of growers harvest less than 10,000 barrels, and 10 percent harvest between 10,000 and 25,000 barrels. More than half of Wisconsin growers raise less than 10,000 barrels, while another 29 percent produce between 10,000 and 25,000 barrels. Similar production patterns exist in Washington and Oregon. Over 90 percent of the cranberry crop is processed, with the remainder sold as fresh fruit.

According to the National Agricultural Statistics Service (NASS), the 2003 overall U.S. cranberry crop totaled 6.1 million barrels (1 barrel equals 100 pounds of cranberries). Total barrels of cranberry imports acquired were 1.06 million pounds. The U.S. 2003 preliminary price for fresh and processed cranberries was $50.90 and $30.60 per barrel respectively.

Under Part 926, the Committee estimates that there are approximately 130 handlers, producer-handlers, processors, brokers, and importers subject to the data collection requirements. Taking into account the profile of the size of the industry under the marketing order, we estimate that most of these entities are considered small under the SBA criteria.

Public Law 106–78, enacted October 22, 1999, amended section 608(d) of the Act to authorize USDA to require persons engaged in the handling of cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) not subject to the order to maintain adequate records and report sales, acquisitions, and inventory information. The data collection and reporting requirements will help the Committee make more informed recommendations to USDA for regulations authorized under the cranberry marketing order.

This rule implements the reporting and recordkeeping requirements authorized by the amendment to the Act. Under the regulations, handlers, producer-handlers, processors, brokers, and importers are required to submit reports four times annually regarding sales, acquisitions, movement for further processing and disposition of cranberries and cranberry products.

The Committee discussed alternatives to this action, including continuing to

ask those entities not subject to the marketing order to voluntarily submit inventory data to the Committee. This has not been successful. To make well informed regulatory decisions, the Committee needs complete inventory, sales and acquisition information from handlers, producer-handlers, processors, brokers, and importers who handle cranberries and cranberry products produced in the United States and outside the United States. This rule establishes reporting and recordkeeping requirements.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. While the data collection and reporting requirements are similar to those reporting requirements regulated handlers must comply with under the cranberry marketing order, this action is necessary to assist the Committee in its volume regulation recommendations.

A proposed rule concerning this action was published in the **Federal Register** on April 12, 2004 (69 FR 19118). Copies of the rule were mailed or sent via facsimile to all Committee members and handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A comment period ending June 11, 2004, was provided to allow interested persons to respond to the proposal.

Seven comments were received during the comment period in response to the proposal. Comments were submitted by the Committee, two cranberry grower associations, a cranberry handler and a juice products association. The growers' associations and the Committee believe it is imperative that the Committee have the ability to collect cranberry data from all cranberry handlers and importers. These commenters contend that the Committee cannot have a concise measurement of industry inventory supplies unless it also obtains this information from second-handlers, processors, importers, and brokers. These commenters also stated that in developing its annual marketing policy, the Committee must estimate the carryover (inventory) of frozen cranberries and other cranberry products. Presently, the Committee can only obtain this data from first handlers with processing facilities within the production area. This action will allow the Committee to have more accurate information in formulating its marketing policy that is used in the decision making process to regulate the cranberry crop, if necessary.

The cranberry handler and the juice products association, in their respective comments, urged the Committee to adopt standard factors for converting processed products to raw fruit. According to the commenters, this would ensure consistent reporting and prevent the release of confidential yield data. Under the expanded data collection authority, all entities reporting to the Committee would use a similar form to report cranberry inventories as those used by handlers regulated under the Federal marketing order. For example, all entities, (under both the expanded data collection and the order), would report on the number of barrels of cranberries, both foreign and domestic, acquired, received, transferred or sold within or outside their respective districts or sold to the Government. No information on specific types of products is requested (*i.e.* number of gallons of juice or cases of cranberry sauce) that could identify any entities' business practices. As previously mentioned, the information collected by the Committee, will be complied in aggregate form and used when it discusses supplies, inventories, and market strategies during its marketing policy meeting.

Both commenters suggested that conversion factors be incorporated into the reporting requirements. The Committee is aware of the generally accepted conversion factors within the industry. However, there is no table or chart of standard factors for converting processed products to raw fruit equivalents maintained or published by the Committee. The development of a table or chart of standard conversion factors would eliminate any guess work by the Committee when converting processed products to raw fruit equivalents. The development of this conversion table/chart has no relevance to the release of proprietary information. Further, the Committee is prohibited under the data collection provisions from disclosing any proprietary information to any person other than the Secretary or her designee(s). Civil and criminal charges can be levied for failing to comply with this provision. We have requested the Committee to meet following the adoption of this rule to discuss this matter and to recommend conversion factors to be implemented by USDA. The Committee could use the suggested conversion factors as a starting point for its discussions. Such factors would be implemented following notice and comment rulemaking procedures. USDA recognizes the importance of consistent reporting.

Two comments opposed to the proposed data collection, reporting, and recordkeeping requirements were received from an individual, and an importer of cranberry products.

One commenter does not want a cranberry committee to be established by the government since it would be a burden on the taxpayers. However, the Committee is already established and funded by assessments levied on handlers covered under the Federal cranberry marketing order. Taxpayer money is not used to pay Committee expenses.

This commenter further stated that importers should not have to file forms quarterly, but every five years. The submission of reports every five years would not help the Committee obtain complete data. Cranberries are produced every year and the Committee needs this information annually to make sound recommendations to USDA. Other statements made by this commenter were not germane to the proposed rule and are not addressed in this final rule.

The cranberry product importer opposes the proposal for five reasons: (1) It violates the spirit of free trade and the North American Free Trade Agreement (NAFTA); (2) it proposes the release of proprietary information; (3) it duplicates efforts and information already available; (4) there are no benefits for non-members of the Committee; and (5) the real issue is surplus versus new markets, not obtaining more information.

The commenter believes that this action violates free trade and the NAFTA agreement. USDA believes that such action would promote free trade and the initiatives under NAFTA by providing access to more complete and accurate cranberry inventory for use in conducting business in the domestic and world markets.

The commenter also asserts that this action will release proprietary information by divulging information about their product sources and acquisitions, inventory levels and sales, and open their premises to authorized agents of the Committee. The requested information will be collected by the Committee under the authority of the Agricultural Marketing Agreement Act of 1937 (Act). The Act does not allow proprietary and confidential business information to be released. Information distributed by the Committee would be released in aggregate numbers to protect the confidentiality of the firms reporting information to the Committee. The information will be used for the purpose of deciding whether volume regulation would be necessary for a particular cranberry crop.

This commenter further believes that this action is duplicative in nature since the U.S. Bureau of Customs and Border Protection Service (Customs) and the U.S. Food and Drug Administration

(FDA) already has this information. The Committee has had difficulty obtaining information on cranberries and cranberry products regulated under the order from Customs and FDA. The cranberry marketing order regulates the *Vaccinium macrocarpon* and *Vaccinium oxycoccus* cranberry species. However, there are over 15 different cranberry varieties within the two cranberry species. Customs Service and FDA do not separate the varietal types in their reports, they combine all of the varieties into one category. Therefore, this action requesting cranberry information and data from handlers, producer-handlers, processors, brokers, and importers is not duplicative in nature, and is needed by the Committee to further program objectives.

This commenter further believes that since it does not have members on the Committee, it would receive no benefits from this action and that the Committee should be developing programs to market more cranberries to absorb the excess production. The Committee operates generic domestic and export promotional programs that are designed to increase the demand and sales of cranberries that benefit the cranberry industry overall. Cranberry exporters and importers benefit from such activities whether or not they are Committee members. Moreover, all meetings of the Committee are public meetings and all interested persons can attend to express the views. Information on meeting times and locations can be obtained from the Committee and USDA. The export promotion program has been in operation for several years and focuses on several export markets. The domestic program is in the early development stages. The Committee recognizes that the industry needs to develop new markets and to expand existing markets for its increasing production. Marketing promotion programs provide a means to accomplish these objectives.

Accordingly, no changes will be made to the rule based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This action requires a collection of information. These information collection requirements are discussed in the following section.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the data collection, reporting, and recordkeeping requirements applicable to cranberries not subject to the cranberry marketing order have been previously approved by OMB and assigned OMB number 0581–0222.

Data collection, reporting and recordkeeping burdens are necessary for developing statistical data for maintenance of this program. The forms require information that is readily available from handlers, producer-handlers, processors, brokers and importers records which can be provided without data processing equipment or trained statistical staff.

It is estimated that it will take each person or entity approximately 20 minutes to complete each form. One of these forms, (Importer Cranberry Inventory Report Form; Form ICIR A–D) directs importers and brokers to indicate the name, address, variety acquired, amount sold to and received by brokers, processors, and handlers, and the beginning and ending inventories of cranberries held by the importer. The second form, (Handler/Processor Cranberry Inventory Report Form; Form HPCIR A–D) directs handlers, producer-handlers, and processors to indicate the name, address, variety acquired, domestic/foreign sales, acquisitions, and beginning and ending inventories. The forms will be required to be filed four times a year.

These forms were designed to capture the type of information the Committee needs on inventory and sales data for the entire cranberry industry. If all of the entities complete each form, it is estimated that the total annual burden on the respondents would be 1 hour and 20 minutes or a total of 174.66 hours. The regulations also require the retention of information for a total of three years.

For the purposes of checking and verifying reports filed under the regulations hereinafter, provisions are included which allows USDA or the Committee, through duly authorized agents, to have access to any premises where cranberries and cranberry products may be held. Authorized agents, at any time during regular business hours, will be permitted to inspect any cranberries and cranberry products held and any and all records with respect to the acquisition, holding or disposition of any cranberries and cranberry products which may be held or which may have been disposed of by that entity. All reports and records furnished or submitted by handlers, producer-handlers, processors, brokers, and importers to the Committee which include data or information constituting a trade secret or disclosing the trade position or financial condition, or business operations from whom received, will be in the custody and control of the authorized agents of the Committee, who will disclose such information to no person other than USDA.

Failure on the part of handlers, producer-handlers, processors, brokers, and importers to comply with the data collection and recordkeeping requirements could lead to enforcement action, including the levying of fines against the violating person or entity. Any violation of this regulation is subject to a penalty levied under 8c(14) of the Act. False representation to an agency of the United States in any matter, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

The reporting requirements are expected to help the entire cranberry industry. While this rule increases reporting and recordkeeping requirements on affected entities, the benefits of this rule, however, could be substantial. By implementing this rule, the Committee will have access to more complete acquisition, sales, and inventory data and be able to make recommendations based on more detailed information. This, in turn, could lead to more effective marketing decisions and higher returns for producers and non-regulated entities.

After consideration of all relevant matter presented, including the comments received and other available information, it is hereby found that this rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 926

Cranberries and cranberry products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 926 is added to read as follows:

PART 926—DATA COLLECTION, REPORTING AND RECORDKEEPING REQUIREMENTS APPLICABLE TO CRANBERRIES NOT SUBJECT TO THE CRANBERRY MARKETING ORDER

Sec.
926.1 Secretary.

926.2 Act.
926.3 Person.
926.4 Cranberries.
926.5 Fiscal period.
926.6 Committee.
926.7 Producer.
926.8 Handler.
926.9 Handle.
926.10 Acquire.
926.11 Processed cranberries or cranberry products.
926.12 Producer-handler.
926.13 Processor.
926.14 Broker.
926.15 Importer.
926.16 Reports.
926.17 Reporting requirements.
926.18 Records.
926.19 Confidential information.
926.20 Verification of reports and records.
926.21 Suspension or termination.

Authority: 7 U.S.C. 601–674.

§ 926.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in her/his stead.

§ 926.2 Act.

Act means Public Act No. 10, 73d Congress [May 12, 1933], as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 926.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 926.4 Cranberries.

Cranberries means all varieties of the fruit Vaccinium Macrocarpon and Vaccinium oxycoccus, known as cranberries.

§ 926.5 Fiscal period.

Fiscal period is synonymous with fiscal year and crop year and means the 12-month period beginning September 1 and ending August 31 of the following year.

§ 926.6 Committee.

Committee means the Cranberry Marketing Committee, which is hereby authorized by USDA to collect information on sales, acquisitions, and inventories of cranberries and cranberry products under this part. The Committee is established pursuant to the Federal cranberry marketing order regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York (7 CFR part 929).

§ 926.7 Producer.

Producer is synonymous with grower and means any person who produces cranberries for market and has a proprietary interest therein.

§ 926.8 Handler.

Handler means any person who handles cranberries and is not subject to the reporting requirements of Part 929.

§ 926.9 Handle.

Handle means to can, freeze, dehydrate, acquire, sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh or processed cranberries produced within or outside the United States or in any other way to place fresh or processed cranberries into the current of commerce within or outside the United States. This term includes all initial and subsequent handling of cranberries or processed cranberries up to, but not including, the retail level.

§ 926.10 Acquire.

Acquire means to obtain cranberries by any means whatsoever for the purpose of handling cranberries.

§ 926.11 Processed cranberries or cranberry products.

Processed cranberries or cranberry products means cranberries which have been converted from fresh cranberries into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process.

§ 926.12 Producer-handler.

Producer-handler means any person who is a producer of cranberries for market and handles such cranberries.

§ 926.13 Processor.

Processor means any person who receives or acquires fresh or frozen cranberries or cranberries in the form of concentrate from handlers, producer-handlers, importers, brokers or other processors and uses such cranberries or concentrate, with or without other ingredients, in the production of a product for market.

§ 926.14 Broker.

Broker means any person who acts as an agent of the buyer or seller and negotiates the sale or purchase of cranberries or cranberry products.

§ 926.15 Importer.

Importer means any person who causes cranberries or cranberry products produced outside the United States to be brought into the United States with the intent of entering the cranberries or cranberry products into the current of commerce.

§ 926.16 Reports.

(a) Each handler, producer-handler, processor, broker, and importer engaged in handling or importing cranberries or cranberry products who is not subject to the reporting requirements of the Federal cranberry marketing order, (7 CFR Part 926) shall, in accordance with § 926.17, file promptly with the Committee reports of sales, acquisitions, and inventory information on fresh cranberries and cranberry products using forms supplied by the Committee.

(b) Upon the request of the Committee, with the approval of the Secretary, each handler, producer-handler, processor, broker, and importer engaged in handling or importing cranberries or cranberry products who is not subject to the Federal cranberry marketing order (7 CFR Part 926) shall furnish to the Committee such other information with respect to fresh cranberries and cranberry products acquired and disposed of by such entity as may be necessary to meet the objectives of the Act.

§ 926.17 Reporting requirements.

Handlers, producer-handlers, importers, processors, and brokers not subject to the Federal cranberry marketing order (7 CFR Part 926) shall be required to submit four times annually, for each fiscal period reports regarding sales, acquisitions, movement for further processing, and dispositions of fresh cranberries and cranberry products using forms supplied by the Committee. An Importer Cranberry Inventory Report Form shall be required to be completed by importers and brokers. This report shall indicate the name, address, variety acquired, the amount sold to and received by brokers, processors, and handlers, and the beginning and ending inventories of cranberries held by the importer for each applicable fiscal period. A Handler/Processor Cranberry Inventory Report Form shall be completed by handlers, producer-handlers, and processors and shall indicate the name, address, variety acquired, domestic/foreign sales, acquisitions, and beginning and ending inventories.

§ 926.18 Records.

Each handler, producer-handler, processor, broker, and importer shall maintain such records of all fresh cranberries and cranberry products acquired, imported, handled, withheld from handling, and otherwise disposed of during the fiscal period to

substantiate the required reports. All such records shall be maintained for not less than three years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Committee may direct.

§ 926.19 Confidential information.

All reports and records furnished or submitted pursuant to this part which include data or information constituting a trade secret or disclosing the trade position or financial condition, or business operations from whom received, shall be in the custody and control of the authorized agents of the Committee, who shall disclose such information to no person other than the Secretary.

§ 926.20 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying records and reports required to be filed by handlers, producer-handlers, processors, brokers, and importers, USDA or the Committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cranberries and cranberry products are received, acquired, stored, handled, and otherwise disposed of and, at any time during reasonable business hours, shall be permitted to inspect such handler, producer-handler, processor, broker, and importer premises, and any and all records of such handlers, producer-handlers, processors, brokers, and importers. The Committee's authorized agents shall be the manager of the Committee and other staff under the supervision of the Committee manager.

§ 926.21 Suspension or termination.

The provisions of this part shall be suspended or terminated whenever there is no longer a Federal cranberry marketing order in effect.

Dated: January 5, 2005.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 05–582 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 30

RIN 3150–AH06

Security Requirements for Portable Gauges Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the use of byproduct material in specifically licensed portable gauges. The final rule requires a portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee. The primary intent of this rulemaking is to increase licensees' control of portable gauges to reduce the opportunity for unauthorized removal or theft.

EFFECTIVE DATE: This final rule is effective on July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Portable gauges are devices containing licensed material that are used to determine physical properties (such as density and moisture content of soil, concrete, and other materials) in a field setting. The most commonly used portable gauges contain two encapsulated sources of radioactive material. One source is a sealed gamma source containing 0.30 to 0.37 gigabecquerels (8 to 10 millicuries) of cesium-137 (Cs-137) used to measure density. Another source is a sealed neutron source containing 1.48 to 1.85 gigabecquerels (40 to 50 millicuries) of americium-241/beryllium (Am-241/Be) used to measure moisture content. Other sources have also been utilized in portable gauges. When not in use, portable gauges are generally stored in a permanent storage location within a licensed facility. Sometimes, portable gauges are stored at a jobsite, at a temporary storage location, or on a vehicle. When transporting a portable gauge in a vehicle, the gauge is often placed in a transportation case, and then is secured in or onto the vehicle.

Under the authority of the Atomic Energy Act of 1954, NRC, together with the 33 Agreement States, regulates byproduct material used in portable gauges. There are approximately 1100 NRC specific licensees for portable gauges in non-Agreement States and approximately 4000 State specific licensees for portable gauges in Agreement States. There are an estimated 22,000 to 25,000 portable gauges in use in the United States.

Subpart I of 10 CFR part 20 addresses storage and control of licensed material. Specifically, § 20.1801, ''Security of stored material,'' requires licensees to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. Section 20.1802, ''Control of material not in storage,'' requires licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. Despite these requirements, the theft of portable gauges continues at a rate of approximately 50 gauges per year with a less than 50-percent recovery rate, based on reports in NRC's Nuclear Materials Events Database (NMED). More than two-thirds of the stolen gauges were taken from vehicles parked outdoors. In most of these incidents, the gauge was in a U.S. Department of Transportation (DOT) ''Type A'' transportation case, which was then secured with a metal chain to the open bed of a pickup truck. Frequently, the chain was cut or the transportation case was broken, and then the gauge was stolen. NRC has issued several ''Information Notices'' to increase licensees' awareness of security concerns regarding portable gauges. However, the yearly number of reported incidents has not changed in response to these notices.

Although the amount of radioactive material used in a portable gauge is relatively small, and the radioactive material is encapsulated in stainless steel, unauthorized removal of portable gauges still poses a potential public health and safety concern. A portable gauge that is not under the control of a licensee poses a potential radiation hazard to individuals that may come in close contact with the source. It also creates a concern if the portable gauge that is removed without authorization is abandoned, inadvertently recycled, or used inappropriately.

Discussion

To reduce the potential risk to public health and safety, a working group with participation of personnel from the Agreement States of Florida and

Arkansas developed the proposed rule to impose security requirements for portable gauges to increase licensees' control, which would reduce the opportunity for unauthorized removal of the gauges. The security requirements would require that the portable gauge licensees must use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee. The primary intent of this rulemaking is to increase the control of portable gauges and thereby reduce the opportunity for and the number of unauthorized removals or thefts of portable gauges and, as a result, reduce the potential impact to public health and safety. NRC published a notice of proposed rule (68 FR 45172; August 1, 2003) in the **Federal Register** with the opportunity for comment on the proposed amendment to 10 CFR 30.34.

After considering all comments received on the proposed rule and evaluating recommended alternative methods to increase the control of portable gauges, NRC finds that the requirements in the proposed rule are the preferred alternative because they provide the most flexibility for licensees (permitting a choice from a wide range of physical controls) without imposing excessive costs in implementing the controls. Therefore, the final rule contains the same requirements as the proposed rule.

Summary of Public Comments on the Proposed Rule

NRC received eleven comment letters on the proposed rule. The commenters included a member of the public, members of an industry advisory group, three licensees, a radiation service company, two manufacturers, and three States. Copies of the public comments are available for public inspection and copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852.

Among the eleven comment letters, six state that they fully support the goal to reduce lost or stolen gauges; two state that current requirements are adequate; one indicates that the rule is well intended; one expresses the view that a double lock requirement may be excessive; and one believes that the current practice of using a chain to secure a portable gauge in an open-bed pickup truck is not adequate. Among comments from the three States, one indicates that the NRC proposed measures do not go far enough; one states that the current regulatory requirements are adequate; and one supports the goal of the rule but believes the proposed rule to be impractical. A discussion of the comments and NRC's responses follow:

Current Requirements Adequate

Comment: One commenter believes the security procedures to be adequate, but is confident that he can also comply with the language of the proposed change.

Response: Although certain licensees may have adequate procedures for securing the portable gauges, NRC does not believe the current practice of having one physical control is sufficient to reduce the current rate of portable gauge theft.

Comment: The Virginia Department of Transportation (VDOT) has not had any gauges stolen in the past 8 years, and believes that the current security measures are adequate.

Response: NRC disagrees that current security measures are adequate. Although no portable gauge was reported stolen from VDOT over the past 8 years, NRC notes that in the Commonwealth of Virginia, one incident of a lost gauge and two incidents of stolen gauges were reported in 2003, and two incidents of stolen gauges were reported in 2004. To reduce the overall rate of unauthorized removal or theft of portable gauges, NRC believes it is necessary to increase controls for portable gauges.

Malevolent Use of Portable Gauges

Comment: Four commenters stated that portable gauges are not likely to be used for malevolent purposes. One commenter stated that no credible study supports the conclusion that portable gauges might be used for malevolent purposes or that gauges are a substantial risk of such use. That commenter also stated that there is no identifiable pattern to support the idea that individuals are stealing portable moisture/density gauges for malevolent use. One commenter questioned what resulted in the need for a very prescriptive rule for increased security of these gauges since a report to Congress indicated that sources in a single portable gauge are small, and unlikely to be suitable for an effective radiological dispersion device (RDD). Another commenter stated that the potential for the stolen gauges to be used in a radiological dispersion device is minute because it takes such a significant effort to steal a large number of gauges and remove the radioisotopes to manufacture a ''dirty bomb.'' Another commenter indicated that there has not been an increase in gauge thefts in recent years, and that there is no evidence that thefts are for malevolent purposes, but rather it is likely that thefts are more for personal or monetary gain.

Response: NRC agrees. As stated in the regulatory analysis for the proposed rule: ''Because of the small quantity of radioactive material in a portable gauge, the potential for its malevolent use is small.'' Due to the quantity and physical characteristics of the radioactive material used, portable gauges do not pose a substantial risk for malevolent purposes such as a ''dirty bomb.'' Similarly, NRC has not identified any trend or information indicating that reported thefts of portable gauges containing licensed material over the last 2 years resulted in a substantial health and safety consequence. However, NRC is still concerned with the continued loss of control of the licensed materials due to unauthorized removal or theft of portable gauges, the multiple resource impacts in response to such events, and the potential exposure to an individual, who come in close contact with the source in the portable gauge. NRC believes that these additional requirements are needed to improve the control of the licensed material and thus better protect the public from a potential health and safety risk.

Comment: One commenter stated that the International Atomic Energy Agency (IAEA) has published guidance on the security of radioactive sources, on categorization of radioactive sources, and on graded security measures based on potential hazard, vulnerability of the source or device, and potential consequences of malevolent acts. In the interim guidance document on security of radioactive sources, the IAEA has categorized portable gauges as Security Group C. Security measures that the IAEA recommended for Group C include one technical measure that separates the source from unauthorized personnel. The commenter stated that NRC's proposed rule exceeds the security measures recommended by the IAEA, and believes that one technical measure is sufficient.

Response: In addition to one technical measure separating the source from unauthorized personnel for Security Group C material (such as portable gauges), the IAEA also recommends access control at the source location as a sufficient security measure based on the potential hazard, vulnerability of the device, and potential consequences of malevolent acts. This final rule is not based on common defense and security, but is based on protecting public health and safety from the potential of

radiation exposure as a result of unauthorized removal or theft of portable gauges. Instead of one technical measure and access control as recommended by IAEA, NRC believes that two technical measures are needed to sufficiently control the portable gauge from unauthorized removal or theft in the United States. The IAEA guidance on the Security of Radioactive Sources (TECDOC–1355) is an interim guidance for comment by its Member States, and has not been accepted by the United States. In general, NRC may modify IAEA standards, as necessary, to meet NRC's regulatory needs. NRC's current regulatory framework already requires licensees to use one measure of control in securing the portable gauges and has concluded that an additional measure is necessary to reduce the instances of unauthorized removal or theft of portable gauges. NRC has issued several Information Notices to portable gauge licensees to emphasize the importance of adequate control of the portable gauges; however, the number of unauthorized removals or thefts of portable gauges has not decreased. NRC believes that an additional measure of control is needed to reduce the current number.

Rule Will Not Prevent Thefts

Comment: Although several commenters support the NRC's security concerns, one commenter stated that licensees are already required to secure gauges, but that does not prevent carelessness in their control. Securing gauges with two layers of security will not prevent thefts.

Response: NRC agrees that the requirements would not necessarily prevent carelessness in the control of gauges or human error, or ensure compliance by all licensees. Although NRC also agrees that additional security measures can not totally prevent the unauthorized removal or theft of the portable gauges, requiring an additional layer of physical control should deter the likelihood of the unauthorized removal or theft.

Comment: One commenter stated that the rule would not deter insider or opportunistic thefts that occur because of lapses such as leaving the keys in a vehicle that contains a gauge.

Response: Although background checks and hiring practices could potentially deter theft by insiders, NRC does not believe that the very small number of thefts committed by insiders warrants such additional requirements. Requiring licensees to use two independent physical controls should reduce the risk of unauthorized removal or theft of portable gauges from a variety of causes.

Comment: One commenter stated that licensees are already required by regulations to maintain ''adequate security.'' However, the current practice of leaving the gauge in the open bed of a pickup truck chained to the side of the truck is not ''adequate security,'' because gauges have been stolen from the open bed of a pickup truck after the chain was cut.

Response: NRC agrees that all licensees are required to maintain adequate security and control of the licensed material. It appears that the current practices are not sufficient for control of portable gauges. NRC evaluated various alternatives in developing the proposed rule. Based on the cost/benefit analysis in the regulatory analysis, NRC believes that adding one additional layer of control would make it more difficult for a thief to defeat, and the total cost impact would be acceptable.

Comment: One commenter believes that not all licensees would strive to comply with the new requirements. The portable gauge theft rate will not change because the new requirements would not affect these types of licensees, who will ignore the new regulation.

Response: NRC expects the rate of unauthorized removal or theft of portable gauges to decrease once the amendment becomes effective. Not all of the unauthorized removals or thefts of portable gauges are caused by lack of compliance by licensees with security requirements, but are also due to defeating the current security measures allowing the use of one locking device to secure the portable gauge. NRC believes that adding an additional measure would reduce the number of unauthorized removals or thefts by making it more difficult and more time-consuming to defeat the security measures. Requiring two independent physical controls is the most effective alternative based on cost and flexibility to licensees in implementing the rule.

Comment: One commenter stated that additional regulations are unlikely to significantly reduce the number of [stolen] gauges. The commenter believes that a large percentage of the gauges reported stolen were probably left unsecured, and the loss occurred as a ''theft of opportunity,'' rather than a ''determined thief.'' The gauges that were stolen by defeating one security measure would most likely be stolen regardless of the number of independent security systems because a ''determined thief'' is just as likely to defeat two security systems as one.

Response: NRC believes that increasing physical controls provides a delay and deterrent mechanism making it more difficult for a thief to defeat. At a minimum, two controls would delay the thief by drawing attention from bystanders, which may deter the thief.

Comment: One commenter believes that gauges will continue to be stolen from careless gauge owners and by persistent thieves, regardless of the increased security requirements and that the new requirements adversely affect the diligent and vigilant gauge owner.

Response: NRC agrees that no measure is absolute in stopping persistent and determined thieves, but increasing the security controls would make theft more difficult. NRC believes that the financial impact on gauge owners from enhancing security requirements is small when compared to: The financial consequences to the gauge owners due to unauthorized removal or theft of the portable gauges; the potential health and safety risk to the public from these incidents; and the resource impacts on law enforcement and regulatory agencies.

Not Commensurate With Risk

Comment: One commenter stated that the double-lock requirement may be excessive from a security standpoint. Another commenter stated that the proposed rule is inconsistent with a risk-informed approach to regulation because it imposes tighter security requirements on low-activity portable gauges than high-activity devices such as radiography cameras, which pose far greater hazards. It would be far easier and more likely for someone with malevolent intent to steal a single, high-activity radiography device than many low-activity portable gauges, and much less likely to raise suspicions. The commenter does not believe that moisture-density gauges merit security requirements more restrictive than those required for higher-activity portable devices.

Response: NRC disagrees with the commenters. Since the terrorist attacks of September 11, 2001, NRC has issued Orders to enhance security measures for certain licensed facilities. Based on the IAEA Code of Conduct on the Safety and Security of Radioactive Sources and IAEA Categorization of Radioactive Source (TECDOC–1344), NRC considers that portable gauges are not high risk sources if used for malevolent purposes. NRC is still concerned with the number of unauthorized removals or thefts of portable gauges. Even though a typical portable gauge contains much lower activity than a radiography camera,

unauthorized removal or theft of such gauge still poses a potential health and safety risk to the public. As for higher-activity devices, NRC is taking appropriate actions to enhance security and protect the common defense and security.

Comment: One commenter stated that even if the stolen gauge rate is reduced from approximately 50 gauges per year to 25 gauges per year, it would not represent a meaningful reduction in risk in the absence of any evidence that any harm has ever occurred to any individual from a stolen portable gauge.

Response: NRC disagrees with the comment that the reduction would not represent a meaningful reduction in risk. On an average, 50 portable gauges are stolen per year. Every gauge that is not recovered from unauthorized removal or theft poses a potential hazard to the public. It is true that severe radiation injury has not been associated with unauthorized removal or theft of portable gauges. Because the recovery rate is low, the number of unrecovered gauges will continue to grow, posing potential risk to the public.

Change in Gauge Design

Comment: One commenter indicated that if grocery-cart manufacturers can make the wheels of their grocery carts lock if the cart is taken off the property, then portable gauge manufacturers could make it easier for licensees to secure their gauges.

Response: NRC agrees that perhaps portable gauge manufacturers could make it easier for licensees to secure the gauges, but it is not an NRC requirement that such changes take place. Manufacturers are required to design the sealed sources and the devices to operate safely. Because portable gauges are used by licensees in different situations and stored in various locations, the licensees are in a better position to select the security measures best suited for their situation.

Comment: One commenter stated that manufacturers must be required to make gauges ''idiot-proof'' and less attractive to thieves. The commenter suggests the portable gauges be designed so that if a gauge is stolen, the radioactive material portion is sequestered.

Response: With the current portable gauge design, the sealed sources are inaccessible and can not be readily removed by a member of the public when the gauge is in its locked configuration. Because the commenter did not provide any details on the ''sequestering'' technology, it is uncertain if it is feasible to implement or sufficient to protect the public health and safety.

Comment: One commenter suggested the gauge be designed so that the source rod has to be removed and stored separately.

Response: NRC does not believe that it is necessary to remove and store the source rod separately. With the current design, the sealed sources are kept within a shielded compartment inside the portable gauge providing protection for the workers. If the sealed source and the source rod would have to be removed and stored separately, it would greatly increase the radiation exposure to workers from removal of the source rods and from having multiple storage sites. Additionally, the removed sealed source and the source rod would present a greater risk to the public if the licensee were to lose control of the material. Therefore, NRC does not believe there would be sufficient benefit from requiring removal of the sealed source or the source rod.

Comment: A commenter suggests that a ''secured key'' be required for locks.

Response: NRC does not believe that it is necessary to require a secured key for locks. Based on the NMED data, stolen gauges are not linked to a stolen key. Therefore, it would not be cost effective to incorporate a secured key system as means to reduce the opportunity for unauthorized removal or theft of a gauge.

Comment: One commenter stated that ''there's some psychology to be reckoned with'' because merely the suggestion for redesign of an important engineering tool might make management much more amenable to require employees/authorized users to ensure that gauges were secure.

Response: NRC's regulatory requirements are based on technical information and are not based on psychological reactions of certain individuals. NRC believes that having two independent physical controls is a tangible requirement that can be easily inspected and evaluated.

More Enforcement

Comment: Three commenters stated that stricter enforcement action against non-compliant licensees would be better than more rules and would dramatically reduce the number of gauges stolen. One commenter stated that rules are only as effective as their enforcement and that current rules already require that gauges be secured against unauthorized removal. Those licensees that are diligent about security do not have gauges stolen. The annual stolen gauge rate is extremely low (about 0.2 percent), so most licensees are doing a good job. Those licensees that are not diligent or vigilant are unlikely to change as a result of a new rule. Only increased emphasis on inspection and enforcement of the security requirements is likely to cause those licensees to change their ways.

Response: NRC does not believe that the existing security requirements are sufficient, and therefore, enforcement alone will not dramatically reduce the number of unauthorized removals or thefts of portable gauges. NRC believes that it is necessary to increase the current security measures to reduce the opportunity for unauthorized removal or theft. NRC does agree that more frequent inspections and increased enforcement would reduce licensees' future security lapses, but would not affect thefts where all procedures were followed and the thief still defeated the security measures. NRC disagrees that licensees, who are diligent about security, do not have gauges stolen. Many gauges were stolen from compliant licensees by thieves defeating current security measures. NRC has and will continue to enforce security requirements for portable gauges.

Information Notice

Comment: One commenter recommended that NRC rescind the rule and use Information Notices to reduce the number of stolen gauges.

Response: NRC disagrees with the suggestion to use Information Notices as a means to reduce the number of unauthorized removals or thefts of portable gauges. As indicated in the notice of proposed rule (68 FR 45172; August 1, 2003), NRC has issued several Information Notices in the past to remind licensees of their responsibilities concerning the security of portable gauges, and there has been no change in the number of reported incidents annually.

Root Cause Not Addressed

Comment: One commenter claimed the proposed rule has not effectively addressed the root cause of the problem nor is it consistent with a risk-informed, performance-based approach to regulation.

Response: NRC disagrees with the comment. The NRC working group evaluated various alternatives in developing and evaluating the proposed rule in light of comments. Although certain alternatives might be more effective than the chosen one, the associated cost impacts to the licensees' operations from such alternatives would be immense. For example, the alternative of prohibiting the storage of portable gauges in vehicles might be more effective, but the total resource impact on licensees is estimated to be

more than $200 million per year. This assumes each portable gauge operator would spend an additional 2 hours daily in transporting the portable gauge to and from the licensed facility. NRC believes that requiring two independent physical controls will reduce the likelihood of unauthorized removal or theft of portable gauges while minimizing cost impacts to the licensees.

Visibility Issue

Comment: Four commenters suggested that the rule should address the visibility of the gauge (*e.g.*, thief sees it, thinks it's valuable, and steals it). One of the commenters also stated that methods that reduce the visibility of devices are just as important as tangible barriers in preventing theft because most thefts occur when gauges are highly visible (*i.e.*, in open-bed trucks). Keeping a gauge inside a box where it is not visible is an effective physical control.

Response: NRC agrees that portable gauges are often stolen because the thief perceives that the transportation case contains valuable commercial equipment. NRC also agrees that there could be benefits from keeping the portable gauge and its transportation case out of sight or covered any time they are not under the control of the operator. NRC considered this and other various approaches to address the visibility issue, but rejected them as costly, impractical, or contrary to other regulatory requirements, and of questionable effectiveness. For example, NRC considered requiring that the gauge and its transportation case be covered, but the DOT staff informed the NRC staff that such covering of portable gauges during transport would be inconsistent with DOT regulations and defeats the intent of the requirements for labels and markings of portable gauges containing radioactive materials. Requiring the use of a cover to conceal the portable gauge and its transportation case could place licensees in non-compliance with DOT requirements. NRC also considered requiring use of an ''enclosure'' as a means to address the visibility problem. However, requiring the use of an enclosure would have significant cost impacts on licensees that might not be commensurate with the potential benefit gained. Because the rule does not prescribe specific methods for physical control, a licensee will have the flexibility to select an enclosure as one of the two independent physical controls if it were deemed beneficial for its situation. NRC believes it is necessary to have this flexibility for licensees because of the high number of licensees affected, each of which may vary in its operating and financial conditions.

There are many methods that could be used to secure the gauge and its transportation case, which could also keep the gauge and its transportation case out of sight. NRC does not believe it is cost-effective to require additional requirements for such purpose. NRC believes that regulations should provide sufficient flexibility to allow licensees to select the two independent physical controls to prevent the unauthorized removal of the portable gauges that best fit a licensee's needs.

Accessibility Issue

Comment: According to an Agreement State, it requires portable gauges to be returned to an approved storage location after work when the temporary job-site is within 93 kilometers (50 miles) of an approved storage location.

Response: NRC considered requiring the return of portable gauges to an approved storage location daily. However, NRC believes that making it a requirement applicable to all licensees would not be feasible and would not be cost efficient due to the time spent transporting the gauges back and forth from licensed facilities. In the regulatory analysis performed for the proposed rule, NRC evaluated several options including the option of daily return of portable gauges to a permanent storage location. Based on the estimated cost impact of this option, NRC determined that the cost would be excessive considering potential benefits gained from such a requirement.

Comment: One commenter stated that the rule is not likely to be effective because it does not address the critical factors that lead to theft. Clearly, two key factors in the theft of gauges are visibility (open-bed truck) and accessibility (parking location). The fact that chains are frequently cut indicates that physical controls alone are not sufficient to deter a determined individual. The NRC rule does not address visibility or accessibility, but focuses on tangible barriers. NRC states that having to defeat two tangible barriers will deter thefts by requiring a more determined effort to remove the gauge. However, if a thief is able to cut one chain or lock, a second chain or lock hardly seems like much of an additional deterrent.

Response: NRC agrees that using two metal chains as physical barriers instead of one may not be the most effective means of control. Although the use of metal chains is not the most desirable control method, NRC does want to give licensees flexibility to select the controls that are suitable for them. NRC encourages licensees to store gauges in a permanent location and not in vehicles, but NRC does not want to make it a requirement because of the potential economic impacts on licensees. However, since this is a performance-based rule, licensees must ensure that the two physical barriers chosen clearly increase the deterrence value and would make the gauge more difficult to steal.

Too Prescriptive and Not Performance-Based

Comment: Three commenters indicated that the rule is too prescriptive. Specifically, one commenter stated that the rule would not be effective in all cases and would lead to misunderstandings about what is being required. Another commenter stated that the rule dictates too much detail and would severely limit the licensees' ability to be creative in controlling portable gauges. Another commenter stated that the rule is inconsistent with the NRC's performance-based regulatory philosophy. The rule is far more prescriptive than the existing rules in 10 CFR 20.1801 and 20.1802, which address the security of radioactive material in a performance-based manner without specifying the methods to be used. This rule specifies both the method of control and the number of controls required, which prescriptively limits the licensee's choice of methods for complying with the rule. The commenter suggested that other methods, such as reducing the visibility of devices are just as important. Keeping a gauge inside a box where it is not visible is an effective physical control. Audible and visual alarms are also effective physical controls for deterring theft. Security experts recommend layers of protection involving a variety of methods, such as these. By narrowly prescribing that tangible barriers as the only method of compliance, the rule may reduce a licensee's incentive to use other effective means to deter thefts. Deterrence of theft is largely a matter of common sense, which cannot be mandated by rule or regulation. The situations under which portable gauges may be used and stored vary so widely that no prescriptive rule will be practical or effective for all situations.

Response: NRC disagrees with the commenters that the rule is too prescriptive. This rule does not prescribe a specific physical control that needs to be used to secure portable gauges. Licensees have options in selecting from a wide range of physical controls. Of course, there are some

physical controls that are more effective than others. Although options such as storing gauges inside a building or in an enclosure may be effective control methods, factors such as cost impact and variation in licensees' operations must also be considered when considering the control methods. Therefore, requiring ''a minimum of two physical controls'' affords a licensee the flexibility to choose the appropriate independent physical controls to meet its situation, and at the same time provide sufficient security for the portable gauges. Licensees can use more controls in addition to the requirements of the rule. While developing the rule, the working group considered various control methods including audible and visual alarms for vehicles. NRC believes that it would not be cost effective to make these requirements when considering that: (1) A small percentage of unauthorized removals or thefts of portable gauges was associated with vehicles being stolen; (2) the public tends to ignore alarms; and (3) the alarms would have no, or limited, impact on unauthorized removal or theft of portable gauges from open-bed trucks.

Requirements Not Practical

Comment: One commenter stated that methods proposed for securing gauges in vehicles are impractical or costly. Portable gauges must be loaded and unloaded from vehicles frequently; therefore, methods of securing the gauge must be simple and quick. Most portable gauges are transported in open-bed pickup trucks. Any method that requires permanent installation of boxes or attachment would not be practical. The commenter also stated that it is almost impossible to secure a gauge transportation case with a chain or cable without running it through the case handles, which can be removed with ordinary hand tools. In addition, wrapping chains around cases may stress and damage the case requiring replacement to comply with DOT rules for Type A containers.

Response: NRC disagrees with the commenter that methods proposed for securing gauges in vehicles are impractical and/or costly. A licensee is free to choose any physical control methods best suited for its purposes regarding cost and ease of use. The rule does not impose use of a specific physical control such as a metal box or metal chains to secure the gauge. For example, a licensee could use as a tangible barrier the cab area of an open-bed truck for storage of the portable gauge. Although many licensees have chosen to use a metal enclosure as one of the physical controls, it is only one of many possible options that a licensee can select. The use of metal chains as an additional means of physical control may be more practical for certain licensees than other options. Based on the regulatory analysis, NRC believes that requiring two physical controls to secure portable gauges from unauthorized removal would not significantly increase the current burden or be cost prohibitive to implement.

Regarding the comment that wrapping chains around cases may stress and damage the case, NRC notes that transportation boxes are designed to be robust enough to safely transport the intended material. The DOT has design and testing requirements for Type A packages such as portable gauge transportation cases. Among the general design requirements, DOT has stated that each lifting attachment that is a structural part of the package must be designed with a minimum safety factor of three against yielding when used to lift the package in the intended manner. Type A packaging, with contents, must be capable of withstanding the water-spray, free-drop, stacking, and penetration tests. For example, for a stacking test, packaging must be subjected for a period of at least 24 hours to a compressive load equivalent to the greater of: (1) Five times the mass of the actual package; or (2) the equivalent of 13 kilopascals (1.9 pounds per square inch) multiplied by the vertically projected area of the package. For a penetration test, a bar of 3.2 centimeters (1.25 inches) in diameter with a mass of 6 kilograms (13.2 pounds) must be dropped and directed to fall onto the center of the weakest part of the case. Based on the rigorous testing requirements, it would appear that the transportation boxes for portable gauges are designed to withstand various stresses.

Comment: One commenter stated that the prescriptive procedures are not practical for the wide variety of vehicles used for nuclear gauges.

Response: NRC disagrees that the rule contains prescriptive procedures. The rule only requires the licensee to use two independent physical controls and does not prescribe what methods or procedures for control must be used. The licensee may choose from a wide range of physical controls to meet its specific needs as long as the controls form tangible barriers to secure the portable gauge. Physical controls may include, but are not limited to, metal chain with a lock, steel cable with a lock, a secured enclosure, a locked tool box, a locked camper, a locked trailer, locked trunk of a car, a locked vehicle, a locked shelter, a secured fenced-in area, a locked garage, a locked cabinet, a locked room, or a secured building.

Comment: One commenter stated that California requirements for electronic security systems and alarms are impractical in trucks on construction sites. They are damaged and rendered useless by travel over uneven surfaces.

Response: NRC is not requiring the use of electronic security systems nor alarms as one of the independent physical controls. Each licensee has the flexibility to select any two independent physical controls based on its operation, condition of its facilities, financial capability, and degree of control desired.

Comment: Licensing authorities are making and enforcing rules that could only be done by trained security experts or mechanical engineers, even if they were justified.

Response: NRC does not believe that the additional security requirements will call for security experts or engineers to implement. However, licensees and their operators are required to have proper training to safely manage the nuclear materials including properly securing and controlling the portable gauges.

Cost Implications

Comment: One commenter stated that the NRC estimates of savings resulting from the rule are speculative. The saving estimates from implementing the rule are based on the optimistic assumption of a 50 percent reduction in the stolen gauges. This is speculative, as there is no way to predict the actual reduction that may be achieved.

Response: The percent reduction will be dependent, in part, on the type of physical controls that licensees elect to use. If more enclosures are used to secure gauges, a higher reduction in the percentage of unauthorized removal or theft of portable gauges would most likely be achieved. In any event, NRC believes that adding one more tangible barrier as a physical control will reduce the opportunity for unauthorized removal or theft. Given the wide range of physical controls available for the licensees to select, NRC believes that an assumption of a 50 percent reduction is reasonable.

Comment: One commenter stated that the cost is greater than what NRC proposes.

Response: Because the commenter did not provide any data in support of a higher cost impact, NRC cannot perform a comparison. NRC's cost estimate is based on the actual price of an item listed by the vendors. The regulatory analysis for the proposed rule contains the assumptions and unit costs used in

calculating the total cost impact on licensees.

Comment: Two commenters believe that the rule would have a negative economic impact. One commenter believes that increased regulatory requirements and costs will have a negative impact on the sales and use of portable gauges. The other commenter believes that the economic impact on the construction material testing industry will be wide-spread. The commenter stated that the use of portable gauges provides significant benefits in terms of the quality, safety, and longevity of roads. No other technology is as effective for measurement of the properties of materials in road construction as nuclear gauges.

Response: NRC disagrees with the comment. In determining viable options, NRC considered cost to industry versus any potential benefit. The rule would be unlikely to have a major impact on sales and use of portable gauges. Based on estimates, a $200 average increase in the cost of portable gauge use per licensee is relatively small when compared to the cost of a gauge of approximately $7000. Throughout this rulemaking, NRC has remained mindful of cost impacts on licensees. NRC's goal in this rulemaking is not to decrease portable gauge use. This regulation may slightly increase the cost of portable gauge use, but this cost must be balanced against improving the security and control of portable gauges.

Comment: One commenter stated that additional regulations represent an undue hardship to portable gauge licensees. A financial burden to a large licensee at a cost of $114 thousand is unacceptable given the limited potential in reducing the number of stolen gauges.

Response: The NRC disagrees with the comment. With the estimated cost impact of about $200 per gauge, NRC does not believe the increased cost would result in an undue hardship for portable gauge licensees. There are more than 5,000 portable gauge licensees in the United States. The majority of these licensees owns about five to six portable gauges; therefore, the one-time cost impact to a portable gauge licensee would only be about $1000. Other than manufacturers or distributors, it is unusual for a licensee to own hundreds of portable gauges. To minimize cost impact, NRC is providing a 6-month period from the date of publication as the effective date to implement the rule. Along with the flexibility provided in the rule for a licensee to select physical controls most suitable for its situation, NRC does not believe that the new requirements would create an undue hardship to portable gauge licensees.

Comment: A State commenter indicated that making changes to meet the new requirements would result in a large expenditure to taxpayers.

Response: NRC disagrees with the comment. An average of $200 increase per gauge is small when compared to the resources spent by State and Federal law enforcement and regulatory personnel in response to, and in investigating, incidents involving unauthorized removal or theft of portable gauges.

Comment: One commenter predicts an increase in reporting of lost and stolen gauges as licensees find they cannot afford either compliance with the proposed rules or lawful disposal of the gauge sealed source.

Response: NRC disagrees with the commenter's prediction of increased reporting due to cost to comply with the rule requirements or to dispose of the source material. NRC does not believe that the increased costs will force licensees to dispose of the devices improperly. Depending on the physical control selected, the cost impact may be as low as $100 per gauge for using a chain/cable with a lock or $500 per gauge for use of a secured metal enclosure. The disposal cost for each gauge is about $450.

Impact on Landfills, Steel Mills, Scrap Yard, and the Environment

Comment: Three commenters indicated it is unlikely that a stolen gauge would be smelted in scrap-steel processing facilities. According to one commenter, there is no evidence that stolen gauges are more likely to end up at these facilities than gauges which are not stolen. NRC claims that most stolen gauges would be abandoned by the thief and are likely to end up in such places as scrap yards and smelters. In fact, the majority of gauges (51 percent) are recovered according to NRC figures for the last 2 years (SECY–03–0060). That the remainder are likely to end up in smelters, scrap yards, or incinerators is speculative. The second commenter believes that most nuclear devices end up in scrap yards due to the difficulty of disposing of the equipment and the associated cost. Another commenter stated that it is unlikely that a discarded moisture/density gauge would be smelted down because of the use of sensitive monitoring systems.

Response: NRC agrees that the probability is small for a portable gauge obtained by unauthorized removal or theft to be smelted down and contaminate a steel processing plant. However, the potential does exist. Based on historical data, less than half of the unauthorized removals or thefts of portable gauges are recovered. After the September 2001, terrorist events, more resources have been spent in recovery efforts to retrieve portable gauges from unauthorized removal or theft due to heightened security concerns about loss of control of radioactive materials. As a result, the recovery rate for portable gauges may have improved slightly over the past 2 years. Most gauges from unauthorized removal or theft are abandoned or resold. This raises a concern about the potential public health and safety risk. In past years, there have been cases where gauges were found in the environment and in landfills, scrap yards, or recycling plants. For example, in June 2002, a portable gauge containing a Cs-137 source was found at a steel mill's scrap-metal stream, and, in May 2002, a portable moisture gauge containing Am-241 was discovered at a landfill by landfill personnel sorting through the refuse. In both cases, the gauges were removed for proper disposition. Many facilities are now equipped with radiation monitors, and sources are often detected and removed early in the process. Nonetheless, the potential for radioactive material to enter a metal recycling plant still exists. In fact, in 2001, a radioactive source was melted in a steel mill in Florida. The total cost of the cleanup was more than $10 million. The State of Florida suspected that the contamination was from a sealed source from a fixed gauge. Once the radioactive source is melted, it is extremely difficult to determine the type of device that may have contained the source. Although steel mill contamination has never proven to be caused by a portable gauge from unauthorized removal or theft, an abandoned portable gauge still poses a potential concern if it ever gets into a steel mill melt.

Comment: One commenter stated that if an abandoned gauge is deposited in a landfill, the environmental impact would be insignificant.

Response: NRC disagrees with the comment. All licensed materials are required to be properly controlled to ensure protection of public health and safety and the environment. Any uncontrolled licensed material abandoned in the environment or disposed of in a landfill not designed for managing licensed material poses a potential hazard to public health and safety and to the environment. In accordance with 10 CFR part 61, an Am-241 source used in a portable gauge would be classified as a ''greater than Class C waste'' and is not generally

acceptable for near-surface disposal (e.g., landfill).

X-Ray Fluorescence

Comment: One commenter is concerned about controlling lost or stolen generally licensed devices because there are more in circulation than specifically licensed portable devices. There are hundreds, perhaps even thousands, of portable X-Ray Fluorescence (XRF) analyzers that have been distributed as generally licensed devices.

Response: Based on the NMED database, the number of reported incidents of lost or stolen XRF analyzers is extremely low, and in general, the amount of radioactive material used in XRF analyzers is much smaller than the amount used for portable moisture/density gauges. Therefore, there is a considerably reduced risk to public health and safety. Additionally, because XRF analyzers are very small and are usually hand-held units, they can be easily stored in the glove compartment or trunk of a vehicle. XRF analyzers stored in this manner are not visible or easily accessible, which reduces the possibility of opportunistic theft. For these reasons, NRC does not believe that additional security requirements are needed for generally licensed XRF analyzers at this time; therefore, this comment is not within the scope of this rulemaking.

Comment: An Agreement State commenter indicated that it specifically licenses all portable nuclear gauges including lead paint analyzers.

Response: Whether a nuclear device is specifically or generally licensed depends on the design of the device and other factors. In general, most moisture/density gauges are specifically licensed whereas most chemical detectors and lead paint analyzers are generally licensed by either NRC or the Agreement States. NRC regulations establish the basic requirements. Depending on the compatibility categories, individual Agreement States may impose more stringent requirements depending on their specific needs.

The Final Rule

Section 30.34 Terms and Conditions of Licenses

After considering public comment and continuing informal discussion with the DOT staff, it was decided that no changes would be made to the proposed rule. The final rule contains the exact same requirements as the proposed rule. Therefore, the requirements state that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is amending 10 CFR part 30 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is a matter of compatibility between NRC and the Agreement States, thereby providing consistency among the Agreement States and NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (a copy of which may be viewed at *http://www.hsrd.ornl.gov/nrc/home.html*). The NRC staff has determined that amendment to 10 CFR 30.34(I) is classified as Compatibility Category ''C.'' An Agreement State should adopt the essential objectives of the Compatibility Category ''C'' program elements to avoid conflict, duplication, gaps, or the conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis.

NRC determined that the essential objective of 10 CFR 30.34(I) is to reduce the opportunity for unauthorized removal or theft of a portable gauge by requiring a portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

NRC believes that the final rule does not conflict with any existing State regulatory requirement. Personnel from the Agreement States of Florida and Arkansas participated as members of a working group along with the NRC staff in the development of this final rule and the earlier corresponding proposed rule.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, NRC is revising 10 CFR part 30 to add certain requirements for the security of portable gauges containing byproduct material. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required. The Commission has concluded on the basis of an environmental assessment that these requirements would not have any effect on the environment in which portable gauges are currently regulated under 10 CFR part 30. The final rule would increase requirements to reduce opportunity for unauthorized removal or theft of portable gauges containing byproduct material.

NRC requested the views of the States on the environmental assessment for this rule. No comments were received on the environmental assessment. Because no changes were made in the requirements from the proposed rule to the final rule, the environmental assessment has not been changed. The environmental assessment and finding of no significant impact are available for inspection at the NRC Public Document Room, Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Single copies of the environmental assessment and finding of no significant impact are available from Lydia Chang, telephone (301) 415–6319, e-mail *lwc1@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management

and Budget (OMB), approval number 3150–0017.

Public Protection Notification

NRC may not conduct nor sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

In the proposed rule, the Commission requested public comment on the draft regulatory analysis specifically on the costs to licensees. No comments were received on the draft regulatory analysis. However, one of the comments received on the proposed rule indicated that the cost per unit in most cases will be substantially greater than NRC's estimate. Because a licensee has flexibility in selecting the physical controls to be used in securing a portable gauge, the actual cost would depend on the controls selected. The cost per unit could range from $100 for a metal cable to $400 for a simple metal tool box, to even a higher cost for a more elaborately designed metal enclosure. In the regulatory analysis, an average of $200 was used.

The Commission has finalized the regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Lydia Chang, telephone (301) 415–6319, e-mail, *lwc1@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule would affect about 1100 portable gauge specific NRC licensees and an additional 4000 Agreement State specific licensees. These licenses are issued principally to companies involved in road construction and maintenance. Many portable gauge licensees would qualify as small business entities as defined by 10 CFR 2.810. However, the final rule is not expected to have a significant economic impact on these licensees. Based on the regulatory analysis conducted for this action, the costs of the final rule for affected licensees are estimated at $200 per gauge. Among various alternatives considered, NRC believes that this final rule is the least burdensome and most flexible means of accomplishing NRC's regulatory objective. The regulatory analysis also notes that the requirements would result in potential cost savings for portable gauge licensees, particularly for the replacement of portable gauges due to unauthorized removal or theft. These savings would offset the implementation costs for portable gauge licensees. The NRC staff also notes that several Agreement States have imposed similar or more stringent requirements on their portable gauge licensees either by rule, order, or license condition.

In the published proposed rule (68 FR 45172; August 1, 2003), NRC specifically requested public comment from licensees concerning the impact of the proposed regulation because of the widely differing conditions under which portable gauge users operate. NRC particularly was seeking comment from licensees, who qualify as small businesses, as to how the proposed regulation would affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. However, no comments were received on these issues.

Backfit Analysis

NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, NRC is adopting the following amendments to 10 CFR part 30.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 30.34, paragraph (i) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(i) Security requirements for portable gauges.

Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Dated in Rockville, Maryland, this 6th day of January, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–590 Filed 1–11–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM295; Special Conditions No. 25–280–SC]

Special Conditions: Learjet Model 35, 35A, 36, and 36A Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Model 35, 35A, 36, and 36A airplanes modified by ARINC,

Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification is the installation of a Thommen AD32 Air Data Display Unit (ADDU) which incorporates a digital air data computer and altimeter. This equipment will perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 23, 2004. Comments must be received on or before February 11, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM295, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM295.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

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

Background

On September 27, 2004, ARINC Inc., 1632 South Murray Blvd., Colorado Springs, CO 80916 applied for a supplemental type certificate (STC) to modify Learjet Model 35, 35A, 36, and 36A airplanes. Learjet Model 35, 35A, 36, and 36A airplanes are currently approved under Type Certificate No. A10CE. The Learjet Model 35, 35A, 36, and 36A airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 18,000 pounds. These airplanes operate with a 2-pilot crew and can seat up to 8 passengers. The proposed modification is the installation of Dual Thommen AD–32 Air Data Display Units. The avionics/electronics and electrical systems to be installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, ARINC, Inc. must show that the Learjet Model 35, 35A, 36, and 36A airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The original type certification basis for the Learjet Model 35, 35A, 36, and 36A airplanes includes 14 CFR part 25, as amended by Amendments 25–2, 25–4, 25–7, 25–18 and § 25.571(d) of Amendment 25–10.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 35, 35A, 36, and 36A airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Model 35, 35A, 36, and 36A airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should ARINC, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE, to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Learjet Model 35, 35A, 36, and 36A airplanes modified by ARINC, Inc. will incorporate Dual Thommen AD–32 Air Data Display Units that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by

the regulations incorporated by reference, special conditions are needed for the Learjet Model 35, 35A, 36, and 36A airplanes modified by ARINC, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to Learjet Model 35, 35A, 36, and 36A airplanes modified by ARINC, Inc. Should ARINC, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE, to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Learjet Model 35, 35A, 36, and 36A airplanes modified by ARINC, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 35, 35A, 36, and 36A airplanes modified by ARINC, Inc.

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

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

Issued in Renton, Washington, on December 23, 2004.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–557 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards: Transport Category Rotorcraft; Equipment: Flight and Navigation Instruments; Correction

AGENCY: Federal Aviation administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document corrects an error that appears in the Code of Federal Regulations (CFR), title 14, as of January 1, 2004. The regulation relates to attitude-indicating instruments that are required to be installed on transport category rotorcraft.

DATES: Effective on January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Pearsall, phone (202) 267–3042.

SUPPLEMENTARY INFORMATION:

Need for Correction

■ As published in the CFR, these regulations contain errors in which the word ''altitude'' was incorrectly substituted for the word ''attitude''. Accordingly, § 29.1303(g) of 14 CFR part

29 is corrected by making the following correcting amendments:

List of Subjects in 14 CFR Part 29, Subpart F

Equipment.

■ Accordingly, 14 CFR part 29 is corrected by making the following correcting amendments:

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 1. The authority citation for part 29 continues to read as follows:

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

■ 2. Revise paragraphs (g) introductory text, (g)(1) and (g)(4) of § 29.1303 to read as follows:

§ 29.1303 Flight and navigation instruments.

* * * * *

(g) A gyroscopic rate-of-turn indicator combined with an integral slip-skid indicator (turn-and-bank indicator) except that only a slip-skid indicator is required on rotorcraft with a third attitude instrument system that—

(1) Is usable through flight attitudes of ± 80 degrees of pitch and ± 120 degrees of roll;

(2) * * *

(3) * * *

(4) Operates independently of any other attitude indicating system;

* * * * *

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–553 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9175]

RIN 1545–BE19

Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirements for filing corporate income tax returns and returns of organizations required to file returns under section 6033 on magnetic media pursuant to section 6011(e) of the Internal Revenue Code. The term magnetic media includes any magnetic media permitted under applicable regulations, revenue procedures, or publications, including electronic filing. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: These regulations are effective January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Electronic filing of tax returns benefits taxpayers and the IRS by eliminating the manual processing of returns and reducing errors that are more likely to occur during the manual preparation and processing of paper returns. Electronic filing results in faster settling of accounts and better customer service because the time required to process paper returns is eliminated. The error rate for corporate income tax returns filed on Form 1120, ''U.S. Corporation Income Tax Return'' and Form 1120S, U.S. Income Tax Return for an S Corporation,'' on paper is approximately 20 percent. Information returns required to be filed under section 6033, which include Form 990, ''Return of Organization Exempt From Income Tax,'' and Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation,'' that are filed on paper have an error rate of approximately 35 percent. The error rate for paper returns is due in roughly equal parts to IRS processing errors and taxpayer return preparation mistakes. By contrast, electronically filed returns have an error rate of less than one percent because these returns are subject to screening by the IRS prior to being accepted and are not required to be input manually by the IRS. Furthermore, returns required to be filed pursuant to section 6033 must be made available to the public by both the organization and the IRS pursuant to section 6104. Many state charity regulatory agencies rely on these returns. Requiring these returns to be filed electronically improves the accuracy of the information for both public and regulatory oversight of these organizations.

Electronic filing of returns improves taxpayer satisfaction and confidence in the filing process, and may be more cost effective for taxpayers who file electronically. Electronic filing will enable the IRS to review taxpayer submissions expeditiously to reduce audit cycle time and will help the IRS identify emerging trends.

In February 2004, the IRS introduced Modernized e-File, a new electronic filing system for corporations required to file Form 1120 or Form 1120S and organizations required to file Form 990. During the development of Modernized e-File, the IRS worked closely with taxpayers and tax professionals to ensure that the new electronic filing system would satisfy their needs. Modernized e-File alleviates the burden of filing massive paper returns, which may be up to 50,000 pages in length. Electronically filed returns are processed upon receipt and, shortly thereafter, an IRS acknowledgment message is generated to inform taxpayers or tax professionals that the return has been accepted or rejected. Error messages for rejected returns identify the reasons the return was rejected and make it easier for the taxpayer or tax professional to correct the errors. Modernized e-File streamlines electronic filing by eliminating the need for paper documents to be mailed to the IRS and enables taxpayers to attach forms and schedules, along with other documents, to the return in Portable Document Format (PDF).

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e)(2) provides that the Secretary may not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Section 6011(e)(2)(B) requires that the Secretary, prior to issuing regulations requiring these entities to file returns on magnetic media, take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of the regulations. The term magnetic media includes any magnetic media permitted under applicable regulations, revenue procedures, or publications, including electronic filing. Recognizing the benefits of electronic filing, Congress enacted section 2001(a) of the IRS Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 727, which states that the policy of Congress is to promote paperless filing, with a long-range goal of providing for the filing of at least 80 percent of all Federal and information returns in electronic form by 2007.

The IRS has partnered with taxpayers and tax practitioners in the design of Modernized e-File to minimize burdens

on taxpayers and tax practitioners and to address their concerns. Most corporate returns are prepared with the assistance of tax return preparation software. Some of these returns cannot yet be filed electronically using Modernized e-File because additional software is needed to format the return data and additional hardware may be needed to transmit the return data to the IRS. As a result, some taxpayers may incur incremental costs to make the transition from paper filing to electronic filing using Modernized e-File. After carefully evaluating the benefits of electronic filing and the burdens that might be imposed on filers, the IRS has determined that taxpayers will be able to convert to electronic filing at a reasonable cost and that the benefits to both the IRS and taxpayers substantially outweigh the costs.

These regulations amend the Regulations on Procedure and Administration (26 CFR part 301) relating to the filing on magnetic media pursuant to section 6011(e) of corporate income tax returns, S corporation returns, and returns required under section 6033. These regulations provide that certain large corporations, including S corporations, are required to file their corporate income tax returns electronically. These regulations also provide that certain large exempt organizations, nonexempt charitable trusts, and exempt and nonexempt private foundations are required to file electronically returns required to be filed under section 6033.

The IRS currently does not have the capability to accept electronic filing of certain types of Form 1120, Form 1120S, Form 990, and Form 990–PF, such as a Form 1120 for a taxpayer that has changed its accounting period or a Form 1120 that is the taxpayer's final return. These types of returns are excluded from the electronic filing requirement under these regulations. The IRS will announce those returns that are excluded from electronic filing under these regulations in its publications, forms and instructions. The Treasury Department and the IRS intend to require electronic filing of additional corporate income tax returns, excise tax returns and returns required to be filed under section 6033 as the IRS increases its capability to receive these forms electronically, provided that the Treasury Department and the IRS determine that taxpayers are able to comply with the electronic filing requirements at a reasonable cost.

Explanation of Provisions

To expand electronic filing, these regulations provide that the following taxpayers that are required by the Code or regulations to file at least 250 returns during the calendar year ending with or within the taxpayer's taxable year are required to file the following tax returns electronically for the taxable years indicated:

Entities	Form(s)	Applicability dates
Corporations, including electing small business corporations, with assets of $50 million or more.	Form 1120, "U.S. Corporation Income Tax Return" or Form 1120S, "U.S. Income Tax Return for an S Corporation".	Taxable years ending on or after December 31, 2005.
Corporations, including electing small business corporations, with assets of $10 million or more.	Form 1120, "U.S. Corporation Income Tax Return" or Form 1120S, "U.S. Income Tax Return for an S Corporation".	Taxable years ending on or after December 31, 2006.
Exempt organizations with assets of $100 million or more that are required to file returns under section 6033.	Form 990, "Return of Organization Exempt From Income Tax".	Taxable years ending on or after December 31, 2005.
Exempt organizations with assets of $10 million or more that are required to file returns under section 6033.	Form 990, "Return of Organization Exempt From Income Tax".	Taxable years ending on or after December 31, 2006.
Private foundations or section 4947(a)(1) trusts that are required to file returns under section 6033.	Form 990–PF, "Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation".	Taxable years ending on or after December 31, 2006.

Under these regulations, an entity's assets are determined based on total assets at the end of the taxable year as reported on the entity's Form 1120, 1120S, or 990.

Some of these large entities already file their returns electronically. In addition, many of these large entities prepare their income tax returns electronically, but file the returns on paper. The Treasury Department and the IRS have determined that these taxpayers are able to comply at a reasonable cost with the requirement to file returns electronically. To eliminate the potential burden of electronic filing on small businesses that may not be able to comply at a reasonable cost, these regulations exclude small corporations and certain exempt organizations with total assets of less than $10 million.

The determination of whether an entity is required to file at least 250 returns is made by aggregating all returns, regardless of type, that the entity is required to file over the calendar year, including, for example, income tax returns, returns required under section 6033, information returns, excise tax returns, and employment tax returns. Under these regulations, corrected or amended returns are not counted in determining whether the 250-return threshold is met. All members of a controlled group of corporations are required to file their Forms 1120 electronically if the total number of returns required to be filed by the controlled group of corporations is at least 250.

The aggregation of returns required under these regulations is limited to determining whether an entity is required to file Form 1120, Form 1120S, Form 990, or Form 990–PF electronically. These regulations do not affect § 301.6011–2(c)(1)(iii), which provides that returns are not to be aggregated for purposes of determining whether information returns must be filed on magnetic media. These regulations also do not affect § 301.6721–1(a)(2)(ii), which provides that the 250-return threshold requirements apply separately to original and corrected returns.

Corporations required to file Form 1120 or Form 1120S electronically under these regulations may file amended returns on paper in the form allowed by Rev. Proc. 94–69 (1994–2 C.B. 804), or in the manner prescribed by any subsequent revenue procedure. However, an entity that files an incomplete electronic return and subsequently files an amended paper return before the return's due date has not complied with the provisions of these regulations because a second return filed before the due date is treated as an original return.

Hardship Waiver

These regulations provide that the Commissioner may waive the requirements to file electronically in cases of undue hardship. Because the Treasury Department and the IRS believe that electronic filing will not impose significant burdens on the taxpayers covered by these regulations, the Commissioner will grant waivers of the electronic filing requirement only in exceptional cases. The Treasury Department and the IRS invite comments from the public regarding the waiver provision in these regulations. Additionally, the IRS will meet with various groups, including software developers and tax practitioners, to assist taxpayers in preparing to file their returns electronically. After considering comments, the Treasury Department and the IRS will issue guidance that will set forth the procedures by which a taxpayer may request a hardship waiver.

Exclusions

These regulations provide exclusions from the requirement to file electronically for certain corporations and organizations that have not had a longstanding filing obligation. Corporations and organizations are not required to file their returns electronically if they were not required to file a Form 1120, Form 1120S, Form 990, or Form 990–PF for the preceding taxable year or have not been in existence for at least one calendar year prior to the due date (not including extensions) of their Form 1120, Form 1120S, Form 990, or Form 990–PF.

Date of Filing

A return filed electronically is deemed to be filed on the date of the electronic postmark. See § 301.7502–1(d). If a corporation or organization that is required to file electronically fails to do so, the corporation or organization is deemed to have failed to file its return.

Effective Dates

To permit taxpayers sufficient time to implement the requirements of these regulations, these regulations apply to corporations required to file corporate income tax returns with total assets of $50 million or more as shown on their Schedule L of the Form 1120 or 1120S for taxable years ending on or after December 31, 2005, and to corporations required to file corporate income tax returns with total assets of $10 million or more as shown on their Schedule L of their Form 1120 or 1120S for taxable years ending on or after December 31, 2006. These regulations apply to any organization that is required to file Form 990 and that, for a taxable year ending on or after December 31, 2005, has total assets as of the end of the taxable year of $100 million or more or that, for a taxable year ending on or after December 31, 2006, has total assets as of the end of the taxable year of $10 million or more. These regulations will apply to any organization required to file Form 990-PF for taxable years ending on or after December 31, 2006. All other corporations and organizations are encouraged to adopt electronic filing as soon as feasible.

Special Analyses

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

Drafting Information

The principal author of these temporary regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration), although other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6011–5T is added to read as follows:

§ 1.6011–5T Required use of magnetic media for corporate income tax returns (temporary).

The return of a corporation that is required to be filed on magnetic media under § 301.6011–5T of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions. (*See* § 601.601(d)(2) of this chapter).

■ **Par. 3.** Section 1.6033–4T is added to read as follows:

§ 1.6033–4T Required use of magnetic media for returns by organizations required to file returns under section 6033 (temporary).

The return of an organization that is required to be filed on magnetic media under § 301.6033–4T of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions. (*See* § 601.601(d)(2) of this chapter).

■ **Par. 4.** Section 1.6037–2T is added to read as follows:

§ 1.6037–2T Required use of magnetic media for income tax returns of electing small business corporations (temporary).

The return of an electing small business corporation that is required to be filed on magnetic media under § 301.6037–2T of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions. (*See* § 601.601(d)(2) of this chapter).

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 is amended by adding entries, in numerical order, to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6011–5T also issued under 26 U.S.C. 6011. * * *

Section 301.6033–4T also issued under 26 U.S.C. 6033. * * *

Section 301.6037–2T also issued under 26 U.S.C. 6037. * * *

■ **Par. 6.** Section 301.6011–5T is added to read as follows:

§ 301.6011–5T Required use of magnetic media for corporate income tax returns (temporary).

(a) *Corporate income tax returns required on magnetic media*—(1) A corporation required to file a corporate income tax return on Form 1120, ''U.S. Corporation Income Tax Return,'' under § 1.6012–2 of this chapter must file its corporate income tax return on magnetic

media if the corporation is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year ending with or within its taxable year, was required to file a corporate income tax return on Form 1120 under § 1.6012–2 of this chapter for the preceding taxable year, and has been in existence for at least one year prior to the due date (excluding extensions) of its corporate income tax return. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, or instructions. In prescribing revenue procedures, publications, forms, or instructions, the Commissioner may direct the type of magnetic media filing. (*See* § 601.601(d)(2) of this chapter).

(2) All members of a controlled group of corporations must file their corporate income tax returns on magnetic media if the aggregate number of returns required to be filed by the controlled group of corporations is at least 250.

(b) *Waiver.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a corporation fails to file a corporate income tax return on magnetic media when required to do so by this section, the corporation is deemed to have failed to file the return. (*See* section 6651 for the addition to tax for failure to file a return). In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms, or instructions. (*See* § 601.601(d)(2) of this chapter).

(2) *Corporation.* The term *corporation* means a corporation as defined in section 7701(a)(3).

(3) *Controlled group of corporations.* The term *controlled group of corporations* means a group of corporations as defined in section 1563(a).

(4) *Corporate income tax return.* The term *corporate income tax return* means a Form 1120, ''U.S. Corporation Income Tax Return,'' along with all other related forms and schedules that are required to be attached to the Form 1120.

(5) *Determination of 250 returns.* For purposes of this section, a corporation or controlled group of corporations is required to file at least 250 returns if, during the calendar year ending with or within the taxable year of the corporation or the controlled group, the corporation or the controlled group is required to file at least 250 returns of any type, including information returns. If the corporation is a member of a controlled group, the determination of the number of returns includes all returns required to be filed by all members of the controlled group during that calendar year.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(5) of this section:

Example. The taxable year of Corporation X, a fiscal year taxpayer with assets in excess of $10 million, ends on September 30. During the calendar year ending December 31, 2007, X was required to file one Form 1120, ''U.S. Corporation Income Tax Return,'' 100 Forms W–2, ''Wage and Tax Statement,'' 146 Forms 1099-DIV, ''Dividends and Distributions,'' one Form 940, ''Employer's Annual Federal Unemployment (FUTA) Tax Return,'' and four Forms 941, ''Employer's Quarterly Federal Tax Return.'' Because X is required to file 252 returns during the calendar year that ended within its taxable year ending September 30, 2008, X is required to file its Form 1120 electronically for its taxable year ending September 30, 2008.

(f) *Effective dates.* This section applies to corporate income tax returns for corporations that report total assets at the end of the corporation's taxable year that equal or exceed $50 million on Schedule L of their Form 1120, for taxable years ending on or after December 31, 2005. This section applies to corporate income tax returns for corporations that report total assets at the end of the corporation's taxable year that equal or exceed $10 million on Schedule L of their Form 1120, for taxable years ending on or after December 31, 2006.

■ **Par. 7.** Section 301.6033–4T is added to read as follows:

§ 301.6033–4T Required use of *magnetic media* for returns by organizations required to file returns under section 6033 (temporary).

(a) *Returns by organizations required to file returns under section 6033 on magnetic media.* An organization required to file a return under section 6033 on Form 990, ''Return of Organization Exempt from Income Tax,'' or Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation,'' must file its Form 990 or 990–PF on magnetic media if the organization is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year ending with or within its taxable year, was required to file its Form 990 or Form 990–PF under section 6033 for the preceding taxable year, and has been in existence for at least one calendar year prior to the due date (excluding extensions) of its Form 990 or Form 990–PF. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, or instructions. In prescribing revenue procedures, publications, forms, or instructions, the Commissioner may direct the type of magnetic media filing. (*See* § 601.601(d)(2) of this chapter).

(b) *Waiver.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If an organization required to file a return under section 6033 fails to file an information return on magnetic media when required to do so by this section, the organization is deemed to have failed to file the return. (*See* section 6652 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6652–2(f) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term magnetic media means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted

under the applicable regulations, procedures, publications, forms or instructions. (*See* § 601.601(d)(2) of this chapter).

(2) *Return required under section 6033.* The term *return required under section 6033* means a Form 990, ''Return of Organization Exempt from Income Tax,'' and Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation,'' along with all other related forms and schedules that are required to be attached to the Form 990 or Form 990–PF.

(3) *Determination of 250 returns.* For purposes of this section, an organization is required to file at least 250 returns if, during the calendar year ending with or within the taxable year of the organization, the organization is required to file at least 250 returns of any type, including information returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(3) of this section. In the example, the organization is a calendar year taxpayer:

Example. In 2006, Organization T, with total assets in excess of $10 million, is required to file one Form 990, ''Return of Organization Exempt from Income Tax,'' 200 Forms W–2, ''Wage and Tax Statement,'' and 60 Forms 1099–MISC, ''Miscellaneous Income.'' Because T is required to file 261 returns during the calendar year, T must file its 2006 Form 990 electronically.

(f) *Effective dates.* This section applies to any organization required to file Form 990 for a taxable year ending on or after December 31, 2005, that has total assets as of the end of the taxable year of $100 million or more. This section applies to any organization required to file Form 990 for a taxable year ending on or after December 31, 2006 that has total assets as of the end of the taxable year of $10 million or more. This section applies to any organization required to file Form 990–PF for taxable years ending on or after December 31, 2006.

■ **Par. 8.** Section 301.6037–2T is added to read as follows:

§ 301.6037–2T Required use of magnetic media for returns of electing small business corporation (temporary).

(a) *Returns of electing small business corporation required on magnetic media*—An electing small business corporation required to file an electing small business return on Form 1120S, ''U.S. Income Tax Return for an S Corporation,'' under § 1.6037–1 of this chapter must file its Form 1120S on magnetic media if the small business corporation is required by the Internal Revenue Code and regulations to file at least 250 returns during the calendar year ending with or within its taxable year, was required to file its Form 1120S under § 6037–1 of this chapter for the preceding taxable year, and has been in existence for at least one calendar year prior to the due date (excluding extensions) of its Form 1120S. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, or instructions. In prescribing revenue procedures, publications, forms, or instructions, the Commissioner may direct the type of magnetic media filing. (*See* § 601.601(d)(2) of this chapter).

(b) *Waiver.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If an electing small business corporation fails to file a return on magnetic media when required to do so by this section, the corporation is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms, or instructions. (*See* § 601.601(d)(2) of this chapter).

(2) *Corporation.* The term *corporation* means a corporation as defined in section 7701(a)(3).

(3) *Electing small business corporation return.* The term *electing small business corporation return* means a Form 1120S, ''U.S. Income Tax Return for an S Corporation,'' along with all other related forms and schedules that are required to be attached to the Form 1120S.

(4) *Electing small business corporation.* The term *electing small business corporation* means an S corporation as defined in section 1361(a)(1).

(5) *Determination of 250 returns.* For purposes of this section, a corporation is required to file at least 250 returns if, during the calendar year ending with or within the taxable year of the corporation, the corporation is required to file at least 250 returns of any type, including information returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(5) of this section. In the example, the corporation is a calendar year taxpayer:

Example. In 2007, Corporation S, an electing small business corporation with assets in excess of $10 million, is required to file one Form 1120S, ''U.S. Corporation Income Tax Return,'' 100 Forms W–2, ''Wage and Tax Statement,'' 146 Forms 1099–DIV, ''Dividends and Distributions,'' one Form 940, ''Employer's Annual Federal Unemployment (FUTA) Tax Return,'' four Forms 941, ''Employer's Quarterly Federal Tax Return.'' Because S is required to file 252 returns during the calendar year, S is required to file its 2007 Form 1120S electronically.

(f) *Effective dates.* This section applies to returns of electing small business corporations that report total assets at the end of the corporation's taxable year that equal or exceed $50 million on Schedule L of Form 1120S for taxable years ending on or after December 31, 2005. This section applies to returns of electing small business corporations that report total assets at the end of the corporation's taxable year that equal or exceed $10 million on Schedule L of Form 1120S for taxable years ending on or after December 31, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: January 6, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–649 Filed 1–11–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–155]

RIN 1625–AA00

Safety Zone; Wantagh Parkway 3 Bridge Over the Sloop Channel, Town of Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters surrounding the Wantagh Parkway Number 3 Bridge across the Sloop Channel in Town of Hempstead, New York. This zone is necessary to protect vessels transiting in the area from hazards imposed by construction barges and equipment. The barges and equipment are being utilized to construct a new bascule bridge over the Sloop Channel. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 12:01 a.m. on January 1, 2005 until 11:59 p.m. on May 31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–155 and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to restrict and control maritime traffic transiting in the vicinity of the Sloop Channel under the Wantagh Parkway Number 3 Bridge in the Town of Hempstead, Nassau County, Long Island, New York.

In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two bascule piers for the new bridge in early June 2004. A safety zone was not deemed necessary at the inception of the construction, as this channel is primarily used by smaller recreational vessels, which could maneuver outside of the channel. However, bridge construction equipment remains under the Wantagh Parkway Number 3 Bridge poses a potential hazard greater than originally anticipated. A safety zone was deemed necessary and was established on October 9, 2004 through December 31, 2004, the date when construction impacting the navigable channel was estimated to be complete.

On December 14, 2004 the New York State Department of Transportation advised the Coast Guard that construction of the Wantagh Parkway was experiencing delays, requiring equipment to be in the channel in a manner that would leave the waterway unsafe to marine traffic until May 31, 2005. The delay inherent in the NPRM process is contrary to the public interest and impracticable, as immediate action is needed to extend this safety zone to continue to prevent accidents by vessels transiting the area with the construction equipment.

Background and Purpose

Currently, there is a fixed bridge over the Wantagh Parkway Number 3 Bridge over the Sloop Channel in the Town of Hempstead, New York. New York Department of Transportation determined that a moveable bridge would benefit the boating community. In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two-bascule piers for the new bridge in early June 2004. The equipment necessary for the construction of the bridge occupies the entire navigable channel. While there are side channels, which can be navigated, the equipment in the channel is extensive and poses a hazard to recreational vessels attempting to transit the waterway via the side channels under the bridge. Construction, requiring equipment in the navigable channel, was originally scheduled to end on December 31, 2004. Delays in construction require this equipment to occupy the navigable channel until May 31, 2005. To ensure the continued safety of the boating community, the Coast Guard is establishing a safety zone in all waters of the Sloop Channel within 300 yards of the bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Sloop Channel. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule.

Discussion of Rule

This regulation establishes a temporary safety zone on the waters of the Sloop Channel within 300-yards of the Wantagh Parkway Bridge. This action is intended to prohibit vessel traffic in a portion of the Sloop Channel in the Town of Hempstead, New York to provide for the safety of the boating community due to the hazards posed by significant construction equipment located in the waterway for the construction of a new bascule bridge. The safety zone is in effect from 12:01 a.m. on January 1, 2005 until 11:59 p.m. on May 31, 2005. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule. Vessels may utilize the Goose Neck Channel in order to transit to those areas accessible by Sloop Channel. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels may transit in all areas of the Sloop Channel and other than the area of the safety zone, and may utilize other routes with minimal increased transit time.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of the Sloop Channel in the Town of Hempstead, New York covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action, therefore it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. on January 1, 2005 to 11:59 p.m. on May 31, 2005 add temporary § 165.T01–155 to read as follows:

§ 165.T01–155 Safety Zone: Wantagh Parkway Number 3 Bridge over the Sloop Channel, Town of Hempstead, NY.

(a) *Location.* The following area is a safety zone: All waters of the Sloop Channel in Hempstead, NY within 300-yards of the Wantagh Parkway Number 3 Bridge over the Sloop Channel.

(b) *Effective date.* This rule is effective from 12:01 a.m. on January 1, 2005 until 11:59 p.m. on May 31, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: December 30, 2004.

John J. Plunkett,

Commander, U.S. Coast Guard, Acting Captain of the Port, Long Island Sound.

[FR Doc. 05–535 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–046]

RIN 1625–AA87

Security Zone; Protection of Military Cargo, Captain of the Port Zone, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard Captain of the Port Puget Sound published in the **Federal Register** of December 10, 2004, a final rule concerning security zones for the protection of military cargo loading and unloading operations in the navigable waters of Puget Sound. Wording in § 165.1321(c)(3) is being corrected to fix a typographical error in the longitude of the first point listed in the security zone. This document makes this correction.

DATES: This rule is effective January 12, 2005.

FOR FURTHER INFORMATION CONTACT: LTJG T. Thayer, c/o Captain of the Port, Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** on December 10, 2004 (69 FR 71709), which amended 33 CFR 165.1321 by adding Budd Inlet, Olympia, WA as a permanent security zone. In this document, paragraph (c)(3) of the regulatory text contained a typographical error in the longitude of the first point listed in the security zone. The existing, accompanying description of this point as ''approximately the northwestern end of the fence line enclosing Berth 1 at Port of Olympia'' is correct. This correction merely amends the erroneous longitude coordinate in the regulatory text.

■ In rule FR Doc. 04–27213 published on December 10, 2004 (69 FR 71709), make the following correction.

§ 165.1317 [Amended]

■ On page 71711, starting on the fifth line in paragraph (c)(3), remove the phrase ''47°03′12″ N, 122°25′21″ W'' and add, in its place, the phrase ''47°03′12″ N, 122°54′21″ W''.

Dated: December 29, 2004.

Danny Ellis,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–546 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 04–019]

RIN 1625–AA87

Security Zone; San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the geographical boundaries of the permanent security zone at Naval Base San Diego. This action is required to provide adequate area for the U.S. Navy to install an upgraded barrier system and provide the minimum required separation distances between the barrier and protected assets at Naval Station San Diego. The revised security zone will run adjacent to the navigation channel between Piers 14 and Pier 5. From the edge of the navigation channel west of Pier 5, the proposed security zone extends to a point 400 feet opposite of Pier 1. The existing security zone at Naval Station San Diego, implemented on April 15, 2003, does not provide adequate separation distance between protected vessels and the proposed barrier system.

DATES: This rule is effective February 11, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket SD 04–019 and are available for inspection or copying between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MSTC Todd Taylor at (619) 683–6434.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 13, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; San Diego Bay'' in the **Federal Register** (69 FR 55122). We received two letters and one e-mail commenting on the proposed rule. No public meeting was requested, and none was held. However, the proposal was raised as a point of discussion during a previously scheduled San Diego Harbor Safety Committee meeting in October 2004. The U.S. Navy and U.S. Coast Guard participated in several meetings with the San Diego Bay Pilots Association to discuss the impact of this revised security zone and the installment of a permanent barrier system.

Background and Purpose

On May 12, 2003, the Coast Guard published a final rule (68 FR 25288) creating a permanent security zone at Naval Station San Diego. This security zone allowed the U.S. Navy to install a small barrier system to protect critical assets at Naval Station San Diego. The U.S. Navy now intends to install a permanent waterfront boat barrier to protect all assets berthed at Naval Station San Diego. The existing security zone does not provide sufficient area to install the permanent barrier system or provide adequate minimum separation distance between the barrier and protected assets.

Discussion of the Comments and Changes

The Coast Guard received a total of three written responses following publication of the NPRM. San Diego Bay Pilots Association (SDBPA) provided a written response dated October 4, 2004. Their letter stated the SDBPA appreciated, respected, and supported the U.S. Navy's need to protect and secure vital assets in San Diego Bay. It further stated that the proposed extension between Pier 8 and Pier 14 was reasonable and would result in minimal negative impact on the transit of commercial traffic in the area. The SDBPA letter then identified concerns regarding the proposed extension between Pier 1 and Pier 8.

Specifically, SDBPA was concerned that extending the security zone and installing a Port Security Barrier would force the existing small vessel traffic such as tugs and tows, excursion vessels and general recreation vessels to intrude, or move closer to the shipping channel, thereby increasing congestion in the channel and raising the potential for marine accidents. The letter concluded by stating the SDBPA believed the proposed extension between Pier 1 and Pier 8 should not be extended farther than 400 feet from the pier heads, approximately 250 feet closer to shore than proposed in the NPRM.

Based on the SDBPA letter, the U.S. Coast Guard and U.S. Navy initiated several open meetings with the marine pilots to address specific concerns and operational plans for using the Port Security Barrier. During the course of those meetings, the U.S. Navy agreed to revise the coordinates of the mooring buoys at the north end of the boom to address the San Diego Marine Pilot's concerns. Accordingly, the Coast Guard revised the north western point of the security zone and moved it approximately 250 feet southeast, from 32°41′00.0″ N, 117°08′12.7″ W to 32°40′58.3″ N, 117°08′11.0″ W.

The U.S. Navy also agreed to revise the manner by which the Port Security Barrier would be opened and closed when vessels entered or departed the security zone to lessen the impact to the shipping channel. Specifically, the U.S. Navy proposed the barrier would be opened and moved parallel to the shore rather than out into the shipping channel.

The U.S. Coast Guard concurs with the U.S. Navy and the San Diego Marine Pilots Association that the proposed security zone can safely be extended approximately 400 feet west of the existing zone. Small vessel traffic is relatively light in the area, and most vessels already stay well clear of U.S. Navy's current barrier system. The impact to the shipping channel will be minimal, and the benefits of providing additional separation distance for the barrier system outweighs the impact to the shipping channel. Therefore, the Coast Guard changed the regulatory text of this proposal to identify a new geographic coordinates for Point B at 32°40′58.3″ N, 117°08′11.0″ W.

The U.S. Coast Guard received one e-mail response from the U.S. Navy Engineer in charge of the Port Security Barrier project stating he had made a typographical error in the latitude coordinate original project description. The Coast Guard had included that incorrect coordinate in the regulatory text of the NPRM. Specifically, the NPRM identifies the latitude of Point D as ''32°40′27.4″ N'', but it should have read ''32°40′17.0″ N''. All charts and diagrams of this security zone extension that were provided during the meetings and discussions addressed previously had correctly represented the proposed extension. Therefore, the Coast Guard has revised the regulatory text to correctly identify the correct latitude coordinates for Point D.

The U.S. Coast Guard received one signed letter from a private citizen stating strong support for the U.S. Coast Guard's and the U.S. Navy's right and responsibility to demonstrate a strong presence in the area as a deterrent to potential terror threats.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Due to National Security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities because the expanded zone will still allow sufficient room for vessels to transit the channel unimpeded.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No small entities requested assistance.

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

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that the rule is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as significant energy actions. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

The U.S. Navy has separately considered the impact of their proposed project including the placement of anti-small boat barrier booms. The Coast Guard's analysis pertains solely to the expanded placement of the markers designating the security zones already in the waterway. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: Authority: 33 U.S.C. 1226, 1231: 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.1101 to read as follows:

§ 165.1101 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: the water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°40′58.3″ N, 117°08′11.0″ W (Point B); to 32°40′36.0″ N 117°07′49.1″ W (Point C); to 32°40′17.0′ N, 117°07′34.6″ W (Point D); to 32°39′36.4″ N, 117°07′24.8″ W (Point E); to 32°39′38.5″ N 117°07′06.5″ W, (Point F); thence running generally northwesterly along the shoreline of the Naval Station to the place of the beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; Commander, Navy Region Southwest; or the Commanding Officer, Naval Station, San Diego.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: December 23, 2004.

John E. Long,

Captain, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 05–547 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1835 and 1852

RIN 2700–AD04

Final Scientific and Technical Reports—SBIR and STTR Contracts

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change the proposed rule published in the **Federal Register** on August 12, 2004. This final rule amends the NASA FAR Supplement (NFS) by adding an Alternate III to the ''Final Scientific and Technical Reports'' clause for use in contracts awarded under the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs. This change is required to recognize the ''Rights in Data—SBIR Programs'' clause rather than the FAR ''Rights in Data—General'' clause currently referenced in the NFS ''Final Scientific and Technical Reports'' clause.

DATES: *Effective Date:* This rule is effective January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division; (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The NASA FAR Supplement at 1835.070(d) requires all research and development contracts to include the clause at 1852.235–73, Final Scientific and Technical Reports. SBIR and STTR contracts are considered R&D contracts and must include the clause at 1852.235–73. This clause provides direction to the contractor regarding its ability to release data first produced or used in performance of the contract. However, the clause currently only address the contractor's rights in data as defined in FAR 52.227–14, Rights in Data—General. Contractor rights in data under SBIR and STTR contracts are defined in FAR clause 52.227–20, Rights in Data—SBIR Program. This change adds an Alternate III to 1852.235–73 for use in SBIR and STTR contracts that references FAR 52.227–20 to recognize contractor data rights under SBIR and STTR contracts.

NASA published a proposed rule in the **Federal Register** on August 12, 2004 (69 FR 49845). No comments were received. The proposed rule is being adopted as final without change.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it only clarifies what the appropriate data rights clause is used under SBIR and STTR contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1835 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1835 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1835 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

■ 2. Amend section 1835.070 by adding paragraph (d)(3) to read as follows:

1835.070 NASA contract clauses and solicitation provision.

* * * * *

(d) * * *

(3) Except when Alternate II applies in accordance with paragraph (d)(2) of this section, the contracting officer shall insert the clause with its Alternate III in all SBIR and STTR contracts.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 1852.235–73 by revising the date of the clause to read ''(JAN 2005)'' in the first sentence of paragraph (b), removing ''NPG'' and adding ''NPR'' in its place; and adding Alternate III to read as follows:

1852.235–73 Final Scientific and Technical Reports.

* * * * *

Alternate III

(Jan 2005)

As prescribed by 1835.070(d)(3), insert the following as paragraph (e) of the basic clause:

(e) The Contractor's rights in data are defined in FAR 52.227–20, Rights In Data—SBIR Program. The Contractor may publish, or otherwise disseminate, such data without prior review by NASA. The Contractor is responsible for reviewing publication or dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. In the event the Contractor has established its claim to copyright data produced under this contract and has affixed a copyright notice and acknowledgement of Government sponsorship, or has affixed the SBIR Rights Notice contained in paragraph (d) of FAR 52.227–20, the Government shall comply with such Notices.

[FR Doc. 05–530 Filed 1–11–05; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 13]

Reporting of Information and Documents About Potential Defects; Correction

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

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the due dates of reports under the early warning reporting rule.

DATES: This final rule is effective January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Leo Yon, Office of Defects Investigation, NHTSA (phone: 202–366–5226).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, 49 U.S.C. 30166(m). 67 FR 45822. The agency has adopted a number of amendments to that rule. As of October 1, 2003, 49 CFR 579.28(b) Due date of reports read as follows:

> Except as provided in paragraph (n) of this section, each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 30 days after the last day of the reporting period. Notwithstanding the prior sentence, the due date for reports covering the third and fourth calendar quarter of 2003 and the first calendar quarter of 2004 shall be 60 days after the last day of the reporting period. Except as provided in § 579.27(b), if a manufacturer has not received any of the categories of information or documents during a quarter for which it is required to report pursuant to §§ 579.21 through 579.26, the manufacturer's report must indicate that no relevant information or documents were received during that quarter. If the due date for any report is a Saturday, Sunday or a Federal holiday, the report shall be due on the next business day.

A September 28, 2004 notice amended the first two sentences of § 579.28(b) by extending the due date by which quarterly reports are to be submitted to the agency from 30 days to 60 days following the end of a calendar quarter and changing the date by which copies of non-dealer field reports were to be submitted from 30 days after the quarterly reports were due to 15 days after those reports are due. 69 FR 57867. After publishing the September 28th notice, we learned that we had inadvertently deleted the last two sentences of section 579.28(b). We had not intended to delete this language.

Today's amendment corrects this error by re-inserting the last 2 sentences of § 579.28(b). In particular, the language is:

> Except as provided in § 579.27(b), if a manufacturer has not received any of the categories of information or documents during a quarter for which it is required to report pursuant to §§ 579.21 through 579.26, the manufacturer's report must indicate that no relevant information or documents were received during that quarter. If the due date for any report is a Saturday, Sunday or a Federal holiday, the report shall be due on the next business day.

List of Subjects in 49 CFR Part 579

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

■ Accordingly, 49 CFR Part 579 is corrected by making the following correcting amendment.

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart C—Reporting of Early Warning Information

■ 2. In § 579.28, revise paragraph (b) to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(b) *Due date of reports.* Except as provided in subsection (n) of this section, each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 60 days after the last day of the reporting period. Except as provided in § 579.27(b), if a manufacturer has not received any of the categories of information or documents during a quarter for which it is required to report pursuant to §§ 579.21 through 579.26, the manufacturer's report must indicate that no relevant information or documents were received during that quarter. If the due date for any report is a Saturday, Sunday or a Federal holiday, the report shall be due on the next business day.

* * * * *

Issued on: January 3, 2005.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 05–532 Filed 1–11–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041108311–5001–02; I.D. 110204B]

RIN 0648–AR52

Fisheries of the Northeastern United States; Final 2005, 2006, and 2007 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

ACTION: Final rule.

SUMMARY: NMFS is required to specify annual catch quotas for the Atlantic surfclam and ocean quahog fisheries. NMFS issues this rule to set final allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone and an allowable harvest level of Maine mahogany ocean quahogs from Atlantic waters north of 43°50′ N. lat. for the 2005, 2006, and 2007 fishing years.

DATES: Effective January 1, 2005.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, and public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. A copy of the EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html*.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, 978–281–9220.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic

Fishery Management Council (Council), specify annual quotas for surfclams and ocean quahogs from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998), added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit and provided that a small artisanal fishery for ocean quahogs in the waters north of 43°50′ N. lat. has an annual quota with an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation paper, will be conducted by the Council every year to determine if the multi-year quota specifications remains appropriate. The fishing quotas must be in compliance with overfishing definitions for each species.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule (69 FR 67528, November 18, 2004), and is not repeated here. The comment period for the proposed rule ended December 20, 2004.

NMFS is also implementing clarifications to the Atlantic surfclam and ocean quahog regulations through this final rule. Amendments to §§ 648.70(a), and 648.71(a) and (a)(2), remove references to the dates on which the initial allocation of surfclams and ocean quahogs shall be determined, and remove references to the dates on which the proposed and final rules for the annual specifications must be specified and published in the **Federal Register** by the Regional Administrator. References to these dates are not necessary in regulatory text. Additionally, a latitudinal coordinate identifying the ''Boston Foul Ground'' in § 648.73(a)(1) is corrected through re-insertion of a digit that was inadvertently dropped in a previous rulemaking. These administrative revisions are minor, non-substantive changes and do not change operating practices in the fishery.

The final quotas for the 2005–2007 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries, which are unchanged from the proposed rule, are shown in the table below. The status quo level of 2004 for Maine ocean quahog and surfclams is maintained for 2005–2007, but the ocean quahog quota is increased incrementally by 20 percent over the 3-year period.

FINAL 2005–2007 SURFCLAM/OCEAN QUAHOG QUOTAS[1]

	2005		2006		2007	
	bu	hL	bu	hL	bu	hL
[2]Surfclams	3.400	1.810	3.400	1.810	3.400	1.810
[2]Ocean Quahogs	5.333	2.840	5.666	3.016	6.000	3.194
[3]Maine Ocean Quahogs	100,000	35,240	100,000	35,240	100,000	35,240

[1]Numerical values in table are in millions except for Maine ocean quahogs
[2]1 bushel = 1.88 cubic ft = 53.24 liters
[3]1 bushel = 1.2445 cubic ft = 35.24 liters

Comments and Responses

NOAA Fisheries received one comment on the proposed rule during the comment period. The commenter stated the following concerns: (1) There is no rationale for an increase in surfclam quota; and (2) the proposed rule would allow overfishing to continue.

This final rule would not increase the quota for surfclams. The status quo (which is the maximum allowed under the FMP) would remain in effect for the 3-year quota period. Based on the most recent stock assessments, neither the Atlantic surfclam nor the ocean quahog resource is overfished, nor is overfishing occurring. The recommended quotas are expected to allow sustainable fishing to continue for at least 10 years for surfclams and 30 years for ocean quahogs.

Classification

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

A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. Individual Transferable Quota (ITQ) shareholders each receive a portion of the overall annual quotas for the two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surfclams and ocean quahogs begins on January 1, 2005, regardless of the publication of the annual quota, as tags for the 2005 fishing year have already been issued by the vendor pursuant to § 648.75(b). Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery right from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation, it is imperative that the vessel owner have the ability to request that NMFS transfer temporarily part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract in time for the start of the 2005 fishing year on January 1, 2005. Further, and of more immediate concern is that several banks currently hold a total 17 surfclam and 12 ocean quahog allocations. These allocations are held by the banks as security for loans made by the banks to fisherman in these two fisheries. This entails the permanent transfer of the individual allocation to the bank as collateral for the pendency of the loan. The banks request NMFS on an annual basis to transfer temporarily the cage tags associated with the allocation back to the borrower. This transfer enables the borrower to begin fishing at the

beginning of the fishing year in order to generate income with which to discharge the loan. Without a quota in effect, NMFS cannot make a transfer of part or the entirety of an allocation either permanently or temporarily. This inability on the part of NMFS to make such transfers effective would preclude the intended recipients of such transfers from fishing, thereby engendering a negative economic impact on the surfclam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2005–2007 surfclam, ocean quahog, and Maine ocean quahog quotas.

A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are continued in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles of the proposed and final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

No significant issues, including ones relating to the IRFA or the economic effects of the proposed rule, were raised in the public comments. One comment was received and has been addressed in the preamble to the final rule.

Description and Estimate of Number of Small Entities to Which this Rule Will Apply

This action will impact approximately 138 small entities, 82 Atlantic surfclam allocation owners, and 56 ocean quahog allocation owners. In 2003, 50 vessels reported harvesting surfclams or ocean quahogs from Federal waters under the ITQ system. Thirty-five vessels in 2003 fished under Federal limited access Maine ocean quahog permits. All of these businesses are considered small entities under the standards described by the Small Business Administration because they have annual returns that do not exceed $3.5 million annually.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance are unchanged.

Description of Minimization of Economic Impacts on Small Entities

Economic impacts on small entities have been minimized within the constraints of the FMP. Specifically, the commercial quotas must meet the conservation objectives of the FMP, implemented in 50 CFR part 648 under the authority of the Magnuson-Stevens Act. This final rule establishes harvest levels for Atlantic surfclams that are the maximum allowable under the FMP for 2005–2007. Harvest levels for ocean quahogs will be the maximum allowable under the FMP by 2007.

The Council identified three surfclam quota alternatives in addition to the ''no-action'' alternative. The preferred alternative of 3.400 m bu (1.81 m hL) for 2005–2007, an alternative with a 45.6–percent decrease to 1.85 m bu (0.98 m hL), and an alternative with a 4.4–percent decrease to 3.25 m bu (1.73 m hL) were analyzed. The minimum allowable quota specified in the current OY range is 1.850 m bu (0.99 m hL) of surfclams. A 45.6–percent reduction in quota of would have a substantially negative impact on overall ex-vessel revenues equaling a $215,363–decrease per allocation. Adoption of the 4.4–percent decrease in quota would represent a $20,781–reduction per allocation. However, given the current biological status of the surfclam resource, the Council does not believe that a quota reduction is warranted at this time. In summation, the Council determined that the 45.6–percent reduction would significantly negatively impact revenues and a smaller 4.4–percent reduction is not warranted as the stock is not overfished and overfishing is not occurring. The preferred alternative is the 2004 status quo, thus it will have no impact on revenues.

The Council analyzed four ocean quahog quota alternatives in addition to the ''no-action'' alternative. The preferred alternative of a 20–percent increase over 3 years, an alternative with a 20–percent (1.0 m bu (0.53 m hL)) decrease, an alternative with the 2004 status quo of 5.0 m bushels (2.66 m hL), and an alternative with a 20–percent (1.0 m bu (0.53 m hL)) increase in 1 year were analyzed. The minimum allowable quota specified in the current OY range is 4.0 m bu (2.13 m hL) of ocean quahogs. Adoption of a 4.0 m bu (2.13 m hL) quota would represent a 20–percent decrease from the current quota. This alternative would take the most conservative approach to managing the fishery that is currently available to the Council, but would result in the fewest economic benefits available to the ocean quahog fishery. Given the current biological status of the quahog resource, the Council concluded that a quota reduction is not warranted. Adoption of the 2004 status quo quota will have no impact on revenues for small entities. A 20–percent increase in quota in the first year would move directly to the maximum quota allowed in the FMP and, if fully utilized, would equate to a $102,180–increase per allocation. However, the Council was concerned that the industry does not currently have a market available to absorb a large increase in landings that quickly. Additionally, due to uncertainty in the recent stock assessment, the Council recommended a gradual increase, with annual reviews to confirm its appropriateness. Although two alternatives would allow for increased revenues, the Council recommended a gradual 20–percent increase over 3 years, rather than the 20–percent increase in the first year.

The quota for Maine mahogany ocean quahogs is specified at the maximum allowable 100,000 Maine bu (35,240 hL). The FMP specifies that adjustments to the quota above 100,000 Maine bu (35,240 hL) require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany ocean quahog fishery, in addition to the preferred alternative of 100,000 Maine bushels (35,240 hL), including 50,000 Maine bu and 92,500 Maine bu (17,620 and 32,596 hL). Any quota below the 1999 landing level of 93,938 Maine bu (33,104 hL) would have resulted in a decrease in revenues to individual vessels.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the action a small entity is required to take to comply with a rule

or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and the limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeing requirements.

Dated: January 6, 2005.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.70, paragraph (a)(1) is revised to read as follows:

§ 648.70 Annual individual allocations.

(a) * * *

(1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

* * * * *

■ 3. In § 648.71, paragraphs (a) introductory text and (a)(2) are revised as follows:

§ 648.71 Catch quotas.

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3-year period by the Regional Administrator. The initial 3-year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3-year specifications of the annual quotas will be accomplished in the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 m bu (98.5 to 181 m L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 m bu (213 to 319.4 m L).

* * * * *

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

■ 4. In § 648.73, paragraph (a)(1) is revised as follows:

§ 648.73 Closed areas.

(a) * * *

(1) *Boston Foul Ground.* The waste disposal site known as the ''Boston Foul Ground'' and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nautical mile in every direction from that point.

* * * * *

[FR Doc. 05–626 Filed 1–11–05; 8:45 am]

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Proposed Rules

Federal Register
Vol. 70, No. 8
Wednesday, January 12, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV05–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2005–2006 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which begins on June 1, 2005. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 677,409 pounds and 35 percent, respectively, and for Class 3 (Native) spearmint oil of 867,958 pounds and 40 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: Comments must be received by February 11, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; e-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2005–2006 marketing year, which begins on June 1, 2005. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of its eight members present, met on October 6, 2004, and recommended salable quantities and allotment percentages for both classes of oil for the 2005–2006 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 677,409 pounds and 35 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 867,958 pounds and 40 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which begins on June 1, 2005. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota. The production area covered by the marketing order currently accounts for

approximately 68 percent of the annual U.S. sales of Scotch spearmint oil.

When the order became effective in 1980, the Far West had 72 percent of the world's sales of Scotch spearmint oil. While the Far West is still the leading producer of Scotch spearmint oil, its share of world sales is now estimated to be about 36 percent. This loss in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it difficult to balance available supplies with demand and to achieve the Committee's overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 6, 2004, meeting estimated that the 2004 producer price of Scotch oil would maintain an average of $10.00 per pound. However, this producer price is below the cost of production for most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU), which estimates production costs to be between $13.50 and $15.00 per pound.

This low level of producer returns has caused a reduction in acreage. When the order became effective in 1980, the Far West region had 9,702 acres of Scotch spearmint. The Committee estimates that the current acreage of Scotch spearmint will be about 4,771 acres. Based on the reduced Scotch spearmint acreage, the Committee estimates that production for the 2004–2005 marketing season will be about 635,508 pounds.

The Committee recommended the 2005–2006 Scotch spearmint oil salable quantity (677,409 pounds) and allotment percentage (35 percent) utilizing sales estimates for 2005–2006 Scotch oil as provided by several of the industry's handlers, as well as historical and current Scotch oil sales levels. The Committee is estimating that about 650,000 pounds of Scotch spearmint oil, on average, may be sold during the 2005–2006 marketing year. When considered in conjunction with the estimated carry in of 351,427 pounds of oil on June 1, 2005, the recommended salable quantity of 677,409 pounds results in a total available supply of Scotch spearmint oil next year of about 1,028,836 pounds.

The recommendation for the 2005–2006 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, the market share is quite different. Over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, most of the world's supply of Native spearmint is produced in the U.S.

The supply and demand characteristics of the current Native spearmint oil market, combined with the stabilizing impact of the marketing order, have kept the price relatively steady, between $9.10 and $9.30 per pound over the last five years. The Committee considers this level too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from $10.26 to $10.92 per pound.

Similar to Scotch, the low level of producer returns has also caused a reduction in Native spearmint acreage. When the order became effective in 1980, the Far West region had 12,153 acres of Native spearmint. The Committee estimates that the 2004–2005 acreage of Native spearmint is about 4,804 acres. Based on the reduced Native spearmint acreage, the Committee estimates that production for the 2004–2005 marketing season will be about 701,372 pounds.

The Committee recommended the 2005–2006 Native spearmint oil salable quantity (867,958 pounds) and allotment percentage (40 percent) utilizing sales estimates for 2005–2006 Native oil as provided by several of the industry's handlers, as well as historical and current Native oil sales levels. The Committee is estimating that about 945,000 pounds of Native spearmint oil, on average, may be sold during the 2005–2006 marketing year. When considered in conjunction with the estimated carry-in of 60,000 pounds of oil on June 1, 2005, the recommended salable quantity of 867,958 pounds results in a total available supply of Native spearmint oil next year of about 927,958 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices since the order's inception have generally stabilized at about $9.85 per pound for Native spearmint oil and at about $12.93 per pound for Scotch spearmint oil. However, the current prices for both classes of oil are below the average due to several factors, including the general uncertainty being experienced through the U.S. economy and the continuing overall weak farm situation, as well as an abundant global supply of spearmint oil. As noted earlier—although lower than what producers believe to be viable—prices currently appear to be stable at about $9.50 for both classes of oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2005–2006 marketing year on the information discussed above, as well as the data outlined below.

1. Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2005—351,427 pounds. This figure is the difference between the estimated 2004–2005 marketing year trade demand of 620,000 pounds and the 2004–2005 marketing year total available supply of 971,427 pounds.

(B) Estimated trade demand for the 2005–2006 marketing year—650,000 pounds. This figure is based on input from producers at five Scotch spearmint oil production area meetings held in September 2004, as well as estimates provided by handlers and other meeting participants at the October 6, 2004, meeting. The average estimated trade demand provided at the five production area meetings was 620,867 pounds, whereas the average handler trade demand ranged from 600,000 to 650,000 pounds. The average of sales over the last five years was 761,142 pounds.

(C) Salable quantity required from the 2005–2006 marketing year production—298,573 pounds. This figure is the

difference between the estimated 2005–2006 marketing year trade demand (650,000 pounds) and the estimated carry-in on June 1, 2005 (351,427 pounds).

(D) Total estimated allotment base for the 2005–2006 marketing year—1,935,455 pounds. This figure represents a one-percent increase over the revised 2004–2005 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—15.4 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—35 percent. This recommendation is based on the Committee's determination that a decrease from the current season's allotment percentage of 40 percent to the computed 15.4 percent would not adequately supply the potential 2005–2006 market.

(G) The Committee's recommended salable quantity—677,409 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2005–2006 marketing year—1,028,836 pounds. This figure is the sum of the 2005–2006 recommended salable quantity (677,409 pounds) and the estimated carry-in on June 1, 2005 (351,427 pounds).

2. Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2005—60,000 pounds. This figure is the difference between the estimated 2004–2005 marketing year trade demand of 1,063,438 pounds and the revised 2004–2005 marketing year total available supply of 1,123,438 pounds.

(B) Estimated trade demand for the 2005–2006 marketing year—945,000 pounds. This figure is based on input from producers at the five Native spearmint oil production area meetings held in September 2004, as well as estimates provided by handlers and other meeting participants at the October 6, 2004, meeting. The average estimated trade demand provided at the five production area meetings was 957,000 pounds, whereas the average handler estimate was 945,000 pounds.

(C) Salable quantity required from the 2005–2006 marketing year production—885,000 pounds. This figure is the difference between the estimated 2005–2006 marketing year trade demand (945,000 pounds) and the estimated carry-in on June 1, 2005 (60,000 pounds).

(D) Total estimated allotment base for the 2005–2006 marketing year—2,169,894 pounds. This figure represents a one percent increase over the revised 2004–2005 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—40.8 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—40 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the five production area meetings (40.6 percent), and input from producers and handlers at the October 6, 2004, meeting.

(G) The Committee's recommended salable quantity—867,958 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2005–2006 marketing year—927,958 pounds. This figure is the sum of the 2005–2006 recommended salable quantity (867,958 pounds) and the estimated carry-in on June 1, 2005 (60,000 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 677,409 pounds and 35 percent and 867,958 and 40 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices and the anticipated supply and trade demand during the 2005–2006 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2005–2006 marketing year may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool until November 1, 2005.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2005–2006 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2005–2006 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2005–2006 season in order to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 59 producers of Class 1 (Scotch) spearmint oil and approximately 91 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 59 Scotch spearmint oil producers and 21 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their mint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil production from 1980 through 2003 was about 0.24. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing years was about 49 percent of the 24-year average (1.875 million pounds from 1980 through 2003) and the largest crop was approximately 166 percent of the 24-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that

individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the available supply during the 2004–2005 marketing year for both classes of oil at 2,094,865 pounds, and that the expected carry-in will be 411,427 pounds. Therefore, with volume control, sales by producers for the 2004–2005 marketing year would be limited to 1,545,367 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2005–2006 producer allotments are based, are 35 percent for Scotch and 40 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.74 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The Far West producer price for both classes of spearmint oil was $9.50 for 2003, which is below the average of $11.26 for the period of 1980 through 2003, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2005–2006 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Scotch spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee also considered various alternative levels of volume control for Scotch spearmint oil, including leaving the percentage the same as the current season, increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously supported decreasing the percentage to 35 percent.

The Committee discussed and rejected the idea of recommending that there not be any volume regulation for Native spearmint oil. The immediate result would be to put an excessive amount of Native reserve pool oil on the market causing depressed prices at the producer level. With the current price for Native spearmint oil lower than the 10-year average, and sales below the 5-year average, the Committee, after considerable discussion, determined that 867,958 pounds and 40 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2005–2006 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2005–2006 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price (1980–2003) of $12.93 per pound for Scotch spearmint oil and $9.85 per pound for Native spearmint oil.

During the period of 1998 through 2003, however, large production and carry-in inventories have contributed to prices below the 24-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from $8.00 to $11.00 per pound for Scotch spearmint oil and between $9.10 and $10.00 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 6, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. This comment period is deemed appropriate so that a final determination can be made prior to June 1, 2005, the beginning of the 2005–2006 marketing year. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.224 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.224 Salable quantities and allotment percentages—2005–2006 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2005, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 677,409 pounds and an allotment percentage of 35 percent.

(b) Class 3 (Native) oil—a salable quantity of 867,958 pounds and an allotment percentage of 40 percent.

Dated: January 5, 2005.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 05–581 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[Docket No. DA–04–04]

National Fluid Milk Processor Promotion Program; Invitation To Submit Comments on Proposed Amendments to the Fluid Milk Promotion Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to the Fluid Milk Promotion Order (Order). The proposed amendment, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, would modify the terms of membership on the Board. The proposed amendment would require that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents would disqualify that member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed. In addition, a public member to the Board who changes employment, gains employment with a new employer, or ceases to continue in the same business would be disqualified in a manner similar to a fluid milk processor member. The Board believes that the proposed amendments are necessary to ensure the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

DATES: Comments must be submitted on or before February 11, 2005.

ADDRESSES: Comments should be filed with USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233. Comments may be faxed to (202) 720–0285 or e-mailed to *David.Jamison2@usda.gov.* You may send your comments by using the electronic process available at the Federal Rulemaking portal at *http://www.regulations.gov.* Comments, which should reference the title of the action and the docket number, will be made available for public inspection at the above address during regular business hours. Comments also will be posted at: *http://www.ams.usda.gov/dairy/index.htm.*

FOR FURTHER INFORMATION CONTACT: David R. Jamison, USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6961, *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990 (Act), as amended, authorizes the Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the

Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. As of March 2004, there were approximately 100 fluid milk processors subject to the provisions of the Order. Most of these processors are considered small entities. The implementation of this rule will not affect the number of fluid milk processors subject to the Order.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public.

The Board has proposed amendments to the membership provisions of the Order. The proposed amendment would require that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents would disqualify that member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed. In addition, a public member to the Board who changes employment or ceases to continue in the same business would be disqualified in a manner similar to a fluid milk processor member. These changes would address (1) potential movement of members from one fluid milk processor to another fluid milk processor or any other change in company affiliation; and (2) changes in affiliation of at-large public members.

The Board believes that the proposed amendments are necessary to ensure the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

The proposed amendment to the Order should not add any additional burden to regulated parties because it relates only to provisions concerning Board membership. Accordingly, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain the same to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Statement of Consideration

The proposed rule, if adopted, would amend the Order by modifying the membership qualification for the Board. Section 1160.200 of the Order sets out the criteria for the Secretary to appoint members to the Board where 15 members represent geographic regions and 5 are at-large members of the Board. The Board is proposing the attached amendment to address (1) potential movement of members from one fluid milk processor to another fluid milk processor; and (2) changes in affiliation of at-large public members.

The Board indicates that the fluid milk industry is a dynamic marketplace where mergers and other purchase activities are commonplace. As a result, there have already been circumstances where members representing a fluid milk processor have been subject to employment or ownership changes due to such mergers and other purchase activities. The Board believes that any change in a fluid milk processor member's employer or change in ownership of the fluid milk processor who the member represents should be subject to further examination. Accordingly, the Board has recommended that any change in employment of ownership would disqualify any member. The member would continue to serve on the Board for a period of up to six months until a successor was appointed.

The Board also believes that at-large public members appointed by the Secretary should be subject to the same criteria for disqualification as processor representatives serving on the Board. Pursuant to the Order, the Secretary may appoint up to two members from the general public. Since the Board is comprised of only 20 members, these at-large public representatives play an important role in guiding the Board's operations. Normally, these members have a high level of expertise in a certain area and provide an invaluable perspective in the Board's deliberations. However, the Board believes that changes in a public member's affiliation should be treated similarly to processor members. Therefore, the Board recommended that should a public member change employment or cease to continue in the business that the public member was operating when appointed to the Board, the public member would be disqualified in a manner similar to a fluid milk processor member. This would provide the Secretary with the ability to appoint a new public member should the circumstances warrant a change in representation.

The Board believes that the proposed amendment would ensure the Board is able to equitably represent fluid milk processing constituents and the public interest through the National Fluid Milk Processor Promotion Program.

Interested parties are invited to comment on this proposed rule. A 30-day comment period is provided. This period is deemed appropriate so as to implement the proposed changes, if adopted, as soon as possible, in order to avoid disruption of Board operations and to ensure that the Board represents

its constituents equitably, both geographically and on a volume basis.

List of Subjects in 7 CFR Part 1160

Fluid milk, Milk, Promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1160 be amended as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. In § 1160.200, paragraph (a) is revised to read as follows:

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the non-processor member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for such fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period not to exceed 6 months following the disqualification or until appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative. Should a member representing the general public cease to be employed by the entity employing that member when appointed, gain employment with a new employer, or cease to own or operate the business which that member owned or operated at the date of appointment, such member shall be disqualified for membership on the Board, except that such member shall continue to serve on the Board for a period not to exceed 6 months, or until appointment of a successor Board member, whichever is sooner.

* * * * *

Dated: January 5, 2005.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 05–580 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. CN–04–001]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2004 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by adjusting the total rate of assessment per kilogram for imported cotton collected for use by the Cotton Research and Promotion Program. The proposed total rate of assessment would be calculated by adding together the $1 per bale equivalent assessment and the supplemental assessment, and adjusting the sum to account for the estimated amount of U.S. cotton contained in imported textile products. The proposed adjustment would reduce the assessable portion of the cotton content of imported textile products by the estimated average amount of U.S. cotton contained therein. Exemptions and refunds would continue to be provided for importers wishing to document the U.S. cotton content of specific goods. The proposed rule would continue to ensure that the total assessment collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton, and that the U.S. cotton content of imported products is not subject to more than one assessment.

DATES: Comments must be received on or before March 14, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Whitney Rick, Assistant to the Deputy Administrator, Cotton Program, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., STOP 0224 Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *http://www.cottoncomments@usda.gov* or *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Ave., SW., Washington, DC 20250 during regular business hours. A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Assistant to the Deputy Administrator, Cotton Program, AMS, USDA, 1400 Independence Ave., SW., Stop 0224, Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at whitney.rick@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a

significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. The majority of these importers are small businesses under the criteria established by the Small Business Administration.

The proposed rule would reduce the total rate of assessment per kilogram for imported cotton products collected for use by the Cotton Research and Promotion Program. The proposed total rate of assessment would be calculated by adding together the $1 per bale equivalent assessment and the supplemental assessment, and adjusting the sum to account for the estimated amount of U.S. cotton contained in imported textile products. The proposed adjustment to the sum would reduce the assessable portion of the cotton content of imported products by 22.2 percent, the current average estimated by AMS of U.S. cotton contained therein. The proposed total rate of assessment per kilogram for imported raw cotton and cotton textile products would be calculated using the following formula:

1. One Dollar per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500 × .453597). $1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

2. Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2003 calendar year weighted average price received by producers for Upland cotton is $0.55 per pound or $1.2125 per kg. (0.55 × 2.2046). Five tenths of one percent of the average price in kg. equals $0.006063 per kg. (1.2125 × .005).

3. Adjustment for U.S. Cotton Content of Imported Products

The adjustment for the U.S. cotton content of assessed imports is obtained by multiplying the sum of Nos. 1 and 2 above by the U.S. cotton share of total net cotton textile imports (0.222) which equals $0.002325 per kilogram ($0.010472 per kg. × 0.222). Subtracting this amount from the sum of Nos. 1 and 2 above would equal the proposed total rate of assessment for imported products of $0.008147 per kilogram ($0.010472 per kg. − $0.002325 per kg. = $0.008147).

The current total rate of assessment on imported raw cotton and imported cotton products is $0.008267 per kilogram. The proposed rule would increase the assessment on raw cotton to $0.010472, an increase of $0.002205. Even though the assessment would be raised for imported raw cotton, the increase is small and will not significantly affect small businesses. The proposed rule would decrease the total rate of assessment for imported cotton products to $0.008147 per kilogram, a decrease of $0.00012 per kilogram from last year. The proposed rule would not have a significant economic impact on a substantial number of importers of cotton and cotton-containing products because importers would be paying a small increase on imported raw cotton and a reduced rate of total assessment on imported cotton products.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act (Act), as amended, 7 U.S.C. 2101 *et seq.*, was enacted by Congress in 1966. Congress intended the Act to:

> [E]nable the establishment of an orderly procedure for the development, financing through adequate assessments on all cotton marketed in the United States and on imports of cotton, and carrying out an effective and continuous coordinated program of research and promotion designed to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for United States cotton.
>
> 7 U.S.C. 2101.

The Act authorizes the Secretary of the Department of Agriculture to issue a Cotton Research and Promotion Order. An amended Order was approved by producers and importers voting in a referendum held July 17–26, 1991. The amended Order was published in the **Federal Register** on December 10, 1991 (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991 (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively. The Order imposes an assessment on the production and importation of cotton in order to pay for the generic research and promotion projects authorized by the Act. The assessment consists of two parts, an assessment of $1 per bale of cotton or per bale equivalent of cotton containing products, and a supplemental assessment tied to the value of cotton.

The Act requires the Secretary to establish procedures to ensure that U.S. (upland) cotton content of imported products is not subject to more than one assessment. Under the current procedures established in the regulations, an importer may receive an exemption from paying the assessment or a reimbursement of the assessment paid by submitting sufficient documentation to the Board to verify the U.S. cotton content of the products to be imported or already imported. Because foreign mills frequently mix U.S. cotton with other cottons when formulating cotton yarns and fabrics, the ability of importers, except those purchasing products from mills that use only U.S. cotton, to verify through documentation the U.S. cotton content of the products they are importing may be limited.

AMS believes that changes in the composition of U.S. cotton use and the upcoming completion of the removal of all U.S. import quotas on textile manufactures as outlined in the Agreement on Textile and Clothing necessitates a change to its current regulatory procedures for ensuring that U.S. (upland) cotton content of imported products is not subject to more than one assessment. Prior to the 2001/2002 crop year, the majority of U.S. (upland) cotton (58 percent in the 2000/2001 crop year) was consumed domestically by U.S. mills. Starting with the 2001/2002 crop year, a majority of U.S. cotton was exported (67 percent in 2003/2004). AMS expects this shift in the composition of U.S. cotton use to continue into the foreseeable future and that the ending of U.S. textile quotas will lead to an increase in the amount of U.S. cotton returning to the United States in cotton product imports. AMS, therefore, believes that it is appropriate at this time to make an adjustment to the total rate of assessment to account for the amount of U.S. cotton content of imported textile products.

The estimated amount of U.S. cotton contained in total assessable cotton imports would be calculated by multiplying the U.S. cotton export share of foreign mill use adjusted for location by assessable imports. Adjusting the average amount of U.S. cotton contained in total cotton imports for location would ensure that the U.S. cotton content of total cotton imports would properly account for differences among supplying countries with respect to U.S. cotton's share of their cotton mill use and in their share of U.S. cotton product imports.

AMS will use regularly published statistics on U.S. exports by destination (Weekly Export Sales Report), the world's textile usage of cotton by country (Foreign Agricultural Service Cotton Circular) and the raw cotton equivalent contained in imports and exports of textile manufactures by country (Cotton & Wool Outlook) in the calculations of the U.S. content of U.S. imports of processed cotton products. AMS would determine the percentage of U.S. cotton contained in total assessable cotton imports as follows:

Step 1. Define six non-U.S. cotton product supply regions: (i) North America: Bahamas, Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, (ii) South America: Argentina, Brazil, Chile, Colombia, Ecuador, Peru, Venezuela, (iii) Asia: China, Hong Kong, Israel, Japan, Malaysia, Philippines, Saudi Arabia, Singapore, South Korea, Sri Lanka, Taiwan, United Arab Emirates, (iv) Europe: Belgium, France, Germany, Ireland, Italy, Netherlands, Poland, Spain, Turkey, (v) Oceania: Australia, and (vi) Africa: Ivory Coast, Morocco, Nigeria, South Africa. These six regions coincide with the six regions used by the USDA's Economic Research Service in its reporting of U.S. cotton textile imports.

Step 2. Calculate the U.S. cotton share of foreign mill use for each region by dividing total U.S. exports of raw cotton to each region by total mill consumption of raw cotton in that region. This would represent an approximation of the percentage of U.S. cotton contained in all cotton products imported into the United States from that region. For the purpose of this calculation, U.S. cotton content contained in a region's cotton products is uniformly distributed across each product manufactured in that region.

Under the proposed rule, AMS examined the most current data available and determined that U.S. cotton's share of non-U.S. mill use for each region was as follows: North America, 100.0 percent; South America, 16.0 percent; Asia, 9.9 percent; Europe, 11.6 percent; Oceana, 0.0 percent; and Africa, 0.2 percent. These shares were obtained by dividing U.S. exports of raw cotton to each region by total cotton mill use in each region. The specific calculations are shown in Table 1.

TABLE 1.—TABULATION OF U.S. COTTON EXPORT SHARE OF FOREIGN MILL USE

Region	U.S. exports of raw cotton	Raw cotton mill use—million 480 lb. Bales—	U.S. cotton share of raw cotton mill use
North America	2.842	2.767	[a] 1.000
South America	0.833	5.207	0.160
Asia	6.481	65.254	0.099
Europe	1.757	15.103	0.116
Oceana	0.000	0.125	0.000
Africa	0.006	2.876	0.002

[a] North America share capped at 1.000.

Step 3. Determine total imports of assessable cotton for each region by subtracting the total cotton content of U.S. exports of processed cotton products in raw cotton equivalents to each region from the total cotton content of U.S. imports of processed cotton products from that region in raw cotton equivalents. The net result (net imports) of processed cotton products provides an approximation of the amount of cotton coming into the United States from each region that is not being exempted or receiving a refund.

Under the proposed rule, AMS examined the most current data available and determined that processed cotton imports into the U.S. totaled 9,232 [1] million pounds (North America, 3,116 million pounds; South America, 242 million pounds, Asia, 4,770 million pounds, Europe, 684 million pounds, Oceania, 41 million pounds, and Africa, 378 million pounds. U.S. processed cotton exports for the same time period and regions totaled 2,317 [1] million pounds (North America, 2,151 million pounds; South America, 45 million pounds; Asia 64 million pounds; Europe 45 million pounds; Oceania 5 million pounds; and Africa, 7 million pounds). Subtracting U.S. exports from U.S. imports results in total net imports of 6,915 [1] million pounds (North America, 965 pounds; South America, 197 million pounds; Asia, 4,706 million pounds; Europe, 639 million pounds; Oceana, 36 million pounds; and Africa, 371 million pounds.

[1] Total does not equal sum of regions due to rounding.

Step 4. Adjust the U.S. cotton content of imports for location by multiplying the U.S. cotton share of foreign mill use for each region by that region's share of total imports of assessable cotton and then totaling-up the result obtained across all the regions. The share of total imports of assessed cotton products is calculated by dividing the total assessed cotton contained in each regions' imports as discussed in Step 3 above by the sum of all regions' imports of assessed cotton.

Step 5. The percentage of U.S. cotton contained in assessable imports is then used to calculate the assessable content of imported cotton products by multiplying the cotton content of each imported product by the percentage of U.S. cotton contained in total assessable imports and subtracting that amount from the cotton content of imported products (assessable cotton content = cotton content per HTS code − (cotton content per HTS code × proportion of U.S. cotton contained in U.S. imports) where the proportion of U.S. cotton contained in U.S. imports equals the percentage of U.S. cotton contained in assessable imports divided by 100).

Using the above method and the most current data available to AMS, the proposed rule would lower the total amount of assessments paid by importers for imported textile products by approximately 22.2 percent from the total amount of assessments paid by importers using current procedures. Raw cotton import assessments would increase by 26.7 percent based on the established formula. Exemptions and

refunds would continue to be provided for importers wishing to document the U.S. cotton content of specific goods.

The $1 per bale of cotton or per bale equivalent of cotton containing products, and the supplemental assessment would continue to be calculated the same way. The $1 per bale of cotton or per bale equivalent of cotton containing products assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

The supplemental assessment is levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. AMS assigns the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. The current value of imported cotton as published in the **Federal Register** (68 FR 27898) on May 22, 2003, for the purpose of calculating supplemental assessments on imported cotton is $0.7716 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 2002 which was $0.35 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 2003, which is $0.55 per pound, the new value of imported cotton is $1.2125 per kilogram. The proposed value is $.4409 per kilogram more than the previous value.

The U.S. cotton share of total net imported products is approximated at 0.222. This figure was obtained by multiplying U.S. cotton's share of each region's mill use by that region's share of assessable cotton imports. The U.S. content of assessable cotton imports for each supply region is shown in Table 2.

TABLE 2.—TABULATION OF U.S. COTTON SHARE OF TOTAL ASSESSABLE U.S. COTTON IMPORTS

Region	U.S. share of foreign mill use	Region share of assessable cotton imports	U.S. cotton share of assessable imports
North America	1.000	0.140	0.140
South America	0.160	0.028	0.004
Asia	0.099	0.681	0.067
Europe	0.116	0.092	0.011
Oceana	0.000	0.005	0.000
Africa	0.002	0.054	0.000
Total	N.A.	1.000	0.222

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

1. One Dollar per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500 × .453597).

$1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

2. Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2003 calendar year weighted average price received by producers for Upland cotton is $0.55 per pound or $1.2125 per kg. (0.55 × 2.2046).

Five tenths of one percent of the average price in kg. equals $0.006063 per kg. (1.2125 × .005).

3. Total Rate of Assessment

The total rate of assessment per kilogram of raw cotton is $0.010472 per kg. (obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg., and the supplemental assessment $0.006063 per kg.), and making an adjustment of 0.222 for the U.S. cotton content of assessed imported textile products. The proposed total rate of assessment for imported cotton would be $0.008147 per kilogram. The current total rate of assessment on imported cotton is $0.008267 per kilogram. The proposed rule would decrease the total rate of assessment on imported cotton products to $0.008147 per kilogram, a decrease of $0.00012 per kilogram from last year.

The figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, and have been revised accordingly. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

A sixty-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would adjust the assessments paid by importers on imported raw cotton and cotton products under the Cotton Research and Promotion Order, by increasing the assessment on raw cotton and reducing the total rate of assessment for imported cotton products. These proposed changes would ensure that the total assessment collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton, and that the U.S. cotton content of imported products is not subject to more than one assessment.

Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * * (2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on

imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying the supplemental assessment is $1.2125 per kilogram. The total rate of assessment for imported raw cotton is $0.010472, and the total rate of assessment for imported cotton products is $0.008147 per kilogram.

(3) * * *

(ii) * * *

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IMPORT ASSESSMENT TABLE

(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	1.0472
5201001200	0	1.0472
5201001400	0	1.0472
5201001800	0	1.0472
5201002200	0	1.0472
5201002400	0	1.0472
5201002800	0	1.0472
5201003400	0	1.0472
5201003800	0	1.0472
5204110000	1.1111	0.9052
5204200000	1.1111	0.9052
5205111000	1.1111	0.9052
5205112000	1.1111	0.9052
5205121000	1.1111	0.9052
5205122000	1.1111	0.9052
5205131000	1.1111	0.9052
5205132000	1.1111	0.9052
5205141000	1.1111	0.9052
5205210020	1.1111	0.9052
5205210090	1.1111	0.9052
5205220020	1.1111	0.9052
5205220090	1.1111	0.9052
5205230020	1.1111	0.9052
5205230090	1.1111	0.9052
5205240020	1.1111	0.9052
5205240090	1.1111	0.9052
5205310000	1.1111	0.9052
5205320000	1.1111	0.9052
5205330000	1.1111	0.9052
5205340000	1.1111	0.9052
5205410020	1.1111	0.9052
5205410090	1.1111	0.9052
5205420020	1.1111	0.9052
5205420090	1.1111	0.9052
5205440020	1.1111	0.9052
5205440090	1.1111	0.9052
5206120000	0.5556	0.4526
5206130000	0.5556	0.4526
5206140000	0.5556	0.4526
5206220000	0.5556	0.4526
5206230000	0.5556	0.4526
5206240000	0.5556	0.4526
5206310000	0.5556	0.4526
5207100000	1.1111	0.9052
5207900000	0.5556	0.4526
5208112020	1.1455	0.9332
5208112040	1.1455	0.9332
5208112090	1.1455	0.9332
5208114020	1.1455	0.9332
5208114060	1.1455	0.9332
5208114090	1.1455	0.9332
5208118090	1.1455	0.9332
5208124020	1.1455	0.9332
5208124040	1.1455	0.9332
5208124090	1.1455	0.9332
5208126020	1.1455	0.9332
5208126040	1.1455	0.9332
5208126060	1.1455	0.9332
5208126090	1.1455	0.9332
5208128020	1.1455	0.9332
5208128090	1.1455	0.9332
5208130000	1.1455	0.9332
5208192020	1.1455	0.9332

5208192090	1.1455	0.9332
5208194020	1.1455	0.9332
5208194090	1.1455	0.9332
5208196020	1.1455	0.9332
5208196090	1.1455	0.9332
5208224040	1.1455	0.9332
5208224090	1.1455	0.9332
5208226020	1.1455	0.9332
5208226060	1.1455	0.9332
5208228020	1.1455	0.9332
5208230000	1.1455	0.9332
5208292020	1.1455	0.9332
5208292090	1.1455	0.9332
5208294090	1.1455	0.9332
5208296090	1.1455	0.9332
5208298020	1.1455	0.9332
5208312000	1.1455	0.9332
5208321000	1.1455	0.9332
5208323020	1.1455	0.9332
5208323040	1.1455	0.9332
5208323090	1.1455	0.9332
5208324020	1.1455	0.9332
5208324040	1.1455	0.9332
5208325020	1.1455	0.9332
5208330000	1.1455	0.9332
5208392020	1.1455	0.9332
5208392090	1.1455	0.9332
5208394090	1.1455	0.9332
5208396090	1.1455	0.9332
5208398020	1.1455	0.9332
5208412000	1.1455	0.9332
5208416000	1.1455	0.9332
5208418000	1.1455	0.9332
5208421000	1.1455	0.9332
5208423000	1.1455	0.9332
5208424000	1.1455	0.9332
5208425000	1.1455	0.9332
5208430000	1.1455	0.9332
5208492000	1.1455	0.9332
5208494020	1.1455	0.9332
5208494090	1.1455	0.9332
5208496010	1.1455	0.9332
5208496090	1.1455	0.9332
5208498090	1.1455	0.9332
5208512000	1.1455	0.9332
5208516060	1.1455	0.9332
5208518090	1.1455	0.9332

5208523020	1.1455	0.9332
5208523045	1.1455	0.9332
5208523090	1.1455	0.9332
5208524020	1.1455	0.9332
5208524045	1.1455	0.9332
5208524065	1.1455	0.9332
5208525020	1.1455	0.9332
5208530000	1.1455	0.9332
5208592025	1.1455	0.9332
5208592095	1.1455	0.9332
5208594090	1.1455	0.9332
5208596090	1.1455	0.9332
5209110020	1.1455	0.9332
5209110035	1.1455	0.9332
5209110090	1.1455	0.9332
5209120020	1.1455	0.9332
5209120040	1.1455	0.9332
5209190020	1.1455	0.9332
5209190040	1.1455	0.9332
5209190060	1.1455	0.9332
5209190090	1.1455	0.9332
5209210090	1.1455	0.9332
5209220020	1.1455	0.9332
5209220040	1.1455	0.9332
5209290040	1.1455	0.9332
5209290090	1.1455	0.9332
5209313000	1.1455	0.9332
5209316020	1.1455	0.9332
5209316035	1.1455	0.9332
5209316050	1.1455	0.9332
5209316090	1.1455	0.9332
5209320020	1.1455	0.9332
5209320040	1.1455	0.9332
5209390020	1.1455	0.9332
5209390040	1.1455	0.9332
5209390060	1.1455	0.9332
5209390080	1.1455	0.9332
5209390090	1.1455	0.9332
5209413000	1.1455	0.9332
5209416020	1.1455	0.9332
5209416040	1.1455	0.9332
5209420020	1.0309	0.8399
5209420040	1.0309	0.8399
5209430030	1.1455	0.9332
5209430050	1.1455	0.9332
5209490020	1.1455	0.9332
5209490090	1.1455	0.9332

5209516035	1.1455	0.9332
5209516050	1.1455	0.9332
5209520020	1.1455	0.9332
5209590025	1.1455	0.9332
5209590040	1.1455	0.9332
5209590090	1.1455	0.9332
5210114020	0.6873	0.5599
5210114040	0.6873	0.5599
5210116020	0.6873	0.5599
5210116040	0.6873	0.5599
5210116060	0.6873	0.5599
5210118020	0.6873	0.5599
5210120000	0.6873	0.5599
5210192090	0.6873	0.5599
5210214040	0.6873	0.5599
5210216020	0.6873	0.5599
5210216060	0.6873	0.5599
5210218020	0.6873	0.5599
5210314020	0.6873	0.5599
5210314040	0.6873	0.5599
5210316020	0.6873	0.5599
5210318020	0.6873	0.5599
5210414000	0.6873	0.5599
5210416000	0.6873	0.5599
5210418000	0.6873	0.5599
5210498090	0.6873	0.5599
5210514040	0.6873	0.5599
5210516020	0.6873	0.5599
5210516040	0.6873	0.5599
5210516060	0.6873	0.5599
5211110090	0.6873	0.5599
5211120020	0.6873	0.5599
5211190020	0.6873	0.5599
5211190060	0.6873	0.5599
5211210025	0.6873	0.5599
5211210035	0.4165	0.3393
5211210050	0.6873	0.5599
5211290090	0.6873	0.5599
5211320020	0.6873	0.5599
5211390040	0.6873	0.5599
5211390060	0.6873	0.5599
5211490020	0.6873	0.5599
5211490090	0.6873	0.5599
5211590025	0.6873	0.5599
5212146090	0.9164	0.7466
5212156020	0.9164	0.7466
5212216090	0.9164	0.7466

5509530030	0.5556	0.4526
5509530060	0.5556	0.4526
5513110020	0.4009	0.3266
5513110040	0.4009	0.3266
5513110060	0.4009	0.3266
5513110090	0.4009	0.3266
5513120000	0.4009	0.3266
5513130020	0.4009	0.3266
5513210020	0.4009	0.3266
5513310000	0.4009	0.3266
5514120020	0.4009	0.3266
5516420060	0.4009	0.3266
5516910060	0.4009	0.3266
5516930090	0.4009	0.3266
5601210010	1.1455	0.9332
5601210090	1.1455	0.9332
5601300000	1.1455	0.9332
5602109090	0.5727	0.4666
5602290000	1.1455	0.9332
5602906000	0.526	0.4285
5604900000	0.5556	0.4526
5607909000	0.8889	0.7242
5608901000	1.1111	0.9052
5608902300	1.1111	0.9052
5609001000	1.1111	0.9052
5609004000	0.5556	0.4526
5701104000	0.0556	0.0453
5701109000	0.1111	0.0905
5701901010	1.0444	0.8509
5702109020	1.1	0.8962
5702312000	0.0778	0.0634
5702411000	0.0722	0.0588
5702412000	0.0778	0.0634
5702421000	0.0778	0.0634
5702913000	0.0889	0.0724
5702991010	1.1111	0.9052
5702991090	1.1111	0.9052
5703900000	0.4489	0.3657
5801210000	1.1455	0.9332
5801230000	1.1455	0.9332
5801250010	1.1455	0.9332
5801250020	1.1455	0.9332
5801260020	1.1455	0.9332
5802190000	1.1455	0.9332
5802300030	0.5727	0.4666
5804291000	1.1455	0.9332
5806200010	0.3534	0.2879

5806200090	0.3534	0.2879
5806310000	1.1455	0.9332
5806400000	0.4296	0.3500
5808107000	0.5727	0.4666
5808900010	0.5727	0.4666
5811002000	1.1455	0.9332
6001106000	1.1455	0.9332
6001210000	0.8591	0.6999
6001220000	0.2864	0.2333
6001910010	0.8591	0.6999
6001910020	0.8591	0.6999
6001920020	0.2864	0.2333
6001920030	0.2864	0.2333
6001920040	0.2864	0.2333
6003203000	0.8681	0.7072
6003306000	0.2894	0.2358
6003406000	0.2894	0.2358
6005210000	0.8681	0.7072
6005220000	0.8681	0.7072
6005230000	0.8681	0.7072
6005240000	0.8681	0.7072
6005310010	0.2894	0.2358
6005320010	0.2894	0.2358
6005330010	0.2894	0.2358
6005340010	0.2894	0.2358
6005410010	0.2894	0.2358
6005420010	0.2894	0.2358
6005430010	0.2894	0.2358
6005440010	0.2894	0.2358
6005310080	0.2894	0.2358
6005320080	0.2894	0.2358
6005330080	0.2894	0.2358
6005340080	0.2894	0.2358
6005410080	0.2894	0.2358
6005420080	0.2894	0.2358
6005430080	0.2894	0.2358
6005440080	0.2894	0.2358
6006211000	1.1574	0.9429
6006221000	1.1574	0.9429
6006231000	1.1574	0.9429
6006241000	1.1574	0.9429
6006310040	0.1157	0.0943
6006320040	0.1157	0.0943
6006330040	0.1157	0.0943
6006340040	0.1157	0.0943
6006310080	0.1157	0.0943
6006320080	0.1157	0.0943

6006330080	0.1157	0.0943
6006340080	0.1157	0.0943
6006410085	0.1157	0.0943
6006420085	0.1157	0.0943
6006430085	0.1157	0.0943
6006440085	0.1157	0.0943
6101200010	1.0094	0.8224
6101200020	1.0094	0.8224
6102200010	1.0094	0.8224
6102200020	1.0094	0.8224
6103421020	0.8806	0.7174
6103421040	0.8806	0.7174
6103421050	0.8806	0.7174
6103421070	0.8806	0.7174
6103431520	0.2516	0.2050
6103431540	0.2516	0.2050
6103431550	0.2516	0.2050
6103431570	0.2516	0.2050
6104220040	0.9002	0.7334
6104220060	0.9002	0.7334
6104320000	0.9207	0.7501
6104420010	0.9002	0.7334
6104420020	0.9002	0.7334
6104520010	0.9312	0.7586
6104520020	0.9312	0.7586
6104622006	0.8806	0.7174
6104622011	0.8806	0.7174
6104622016	0.8806	0.7174
6104622021	0.8806	0.7174
6104622026	0.8806	0.7174
6104622028	0.8806	0.7174
6104622030	0.8806	0.7174
6104622060	0.8806	0.7174
6104632006	0.3774	0.3075
6104632011	0.3774	0.3075
6104632026	0.3774	0.3075
6104632028	0.3774	0.3075
6104632030	0.3774	0.3075
6104632060	0.3774	0.3075
6104692030	0.3858	0.3143
6105100010	0.985	0.8025
6105100020	0.985	0.8025
6105100030	0.985	0.8025
6105202010	0.3078	0.2508
6105202030	0.3078	0.2508
6106100010	0.985	0.8025
6106100020	0.985	0.8025

6106100030	0.985	0.8025
6106202010	0.3078	0.2508
6106202030	0.3078	0.2508
6107110010	1.1322	0.9224
6107110020	1.1322	0.9224
6107120010	0.5032	0.4100
6107210010	0.8806	0.7174
6107220015	0.3774	0.3075
6107220025	0.3774	0.3075
6107910040	1.2581	1.0250
6108210010	1.2445	1.0139
6108210020	1.2445	1.0139
6108310010	1.1201	0.9125
6108310020	1.1201	0.9125
6108320010	0.2489	0.2028
6108320015	0.2489	0.2028
6108320025	0.2489	0.2028
6108910005	1.2445	1.0139
6108910015	1.2445	1.0139
6108910025	1.2445	1.0139
6108910030	1.2445	1.0139
6108920030	0.2489	0.2028
6109100005	0.9956	0.8111
6109100007	0.9956	0.8111
6109100009	0.9956	0.8111
6109100012	0.9956	0.8111
6109100014	0.9956	0.8111
6109100018	0.9956	0.8111
6109100023	0.9956	0.8111
6109100027	0.9956	0.8111
6109100037	0.9956	0.8111
6109100040	0.9956	0.8111
6109100045	0.9956	0.8111
6109100060	0.9956	0.8111
6109100065	0.9956	0.8111
6109100070	0.9956	0.8111
6109901007	0.3111	0.2535
6109901009	0.3111	0.2535
6109901049	0.3111	0.2535
6109901050	0.3111	0.2535
6109901060	0.3111	0.2535
6109901065	0.3111	0.2535
6109901090	0.3111	0.2535
6110202005	1.1837	0.9644
6110202010	1.1837	0.9644
6110202015	1.1837	0.9644
6110202020	1.1837	0.9644

6110202025	1.1837	0.9644
6110202030	1.1837	0.9644
6110202035	1.1837	0.9644
6110202040	1.1574	0.9429
6110202045	1.1574	0.9429
6110202065	1.1574	0.9429
6110202075	1.1574	0.9429
6110909022	0.263	0.2143
6110909024	0.263	0.2143
6110909030	0.3946	0.3215
6110909040	0.263	0.2143
6110909042	0.263	0.2143
6111201000	1.2581	1.0250
6111202000	1.2581	1.0250
6111203000	1.0064	0.8199
6111205000	1.0064	0.8199
6111206010	1.0064	0.8199
6111206020	1.0064	0.8199
6111206030	1.0064	0.8199
6111206040	1.0064	0.8199
6111305020	0.2516	0.2050
6111305040	0.2516	0.2050
6112110050	0.7548	0.6149
6112120010	0.2516	0.2050
6112120030	0.2516	0.2050
6112120040	0.2516	0.2050
6112120050	0.2516	0.2050
6112120060	0.2516	0.2050
6112390010	1.1322	0.9224
6112490010	0.9435	0.7687
6114200005	0.9002	0.7334
6114200010	0.9002	0.7334
6114200015	0.9002	0.7334
6114200020	1.286	1.0477
6114200040	0.9002	0.7334
6114200046	0.9002	0.7334
6114200052	0.9002	0.7334
6114200060	0.9002	0.7334
6114301010	0.2572	0.2095
6114301020	0.2572	0.2095
6114303030	0.2572	0.2095
6115198010	1.0417	0.8487
6115929000	1.0417	0.8487
6115936020	0.2315	0.1886
6116101300	0.3655	0.2978
6116101720	0.8528	0.6948
6116926420	1.0965	0.8933

6116926430	1.2183	0.9925
6116926440	1.0965	0.8933
6116928800	1.0965	0.8933
6117809510	0.9747	0.7941
6117809540	0.3655	0.2978
6201121000	0.948	0.7723
6201122010	0.8953	0.7294
6201122050	0.6847	0.5578
6201122060	0.6847	0.5578
6201134030	0.2633	0.2145
6201921000	0.9267	0.7550
6201921500	1.1583	0.9437
6201922010	1.0296	0.8388
6201922021	1.2871	1.0486
6201922031	1.2871	1.0486
6201922041	1.2871	1.0486
6201922051	1.0296	0.8388
6201922061	1.0296	0.8388
6201931000	0.3089	0.2517
6201933511	0.2574	0.2097
6201933521	0.2574	0.2097
6201999060	0.2574	0.2097
6202121000	0.9372	0.7635
6202122010	1.1064	0.9014
6202122025	1.3017	1.0605
6202122050	0.8461	0.6893
6202122060	0.8461	0.6893
6202134005	0.2664	0.2170
6202134020	0.333	0.2713
6202921000	1.0413	0.8483
6202921500	1.0413	0.8483
6202922026	1.3017	1.0605
6202922061	1.0413	0.8483
6202922071	1.0413	0.8483
6202931000	0.3124	0.2545
6202935011	0.2603	0.2121
6202935021	0.2603	0.2121
6203122010	0.1302	0.1061
6203221000	1.3017	1.0605
6203322010	1.2366	1.0075
6203322040	1.2366	1.0075
6203332010	0.1302	0.1061
6203392010	1.1715	0.9544
6203399060	0.2603	0.2121
6203422010	0.9961	0.8115
6203422025	0.9961	0.8115
6203422050	0.9961	0.8115

6203422090	0.9961	0.8115
6203424005	1.2451	1.0144
6203424010	1.2451	1.0144
6203424015	0.9961	0.8115
6203424020	1.2451	1.0144
6203424025	1.2451	1.0144
6203424030	1.2451	1.0144
6203424035	1.2451	1.0144
6203424040	0.9961	0.8115
6203424045	0.9961	0.8115
6203424050	0.9238	0.7526
6203424055	0.9238	0.7526
6203424060	0.9238	0.7526
6203431500	0.1245	0.1014
6203434010	0.1232	0.1004
6203434020	0.1232	0.1004
6203434030	0.1232	0.1004
6203434040	0.1232	0.1004
6203498045	0.249	0.2029
6204132010	0.1302	0.1061
6204192000	0.1302	0.1061
6204198090	0.2603	0.2121
6204221000	1.3017	1.0605
6204223030	1.0413	0.8483
6204223040	1.0413	0.8483
6204223050	1.0413	0.8483
6204223060	1.0413	0.8483
6204223065	1.0413	0.8483
6204292040	0.3254	0.2651
6204322010	1.2366	1.0075
6204322030	1.0413	0.8483
6204322040	1.0413	0.8483
6204423010	1.2728	1.0370
6204423030	0.9546	0.7777
6204423040	0.9546	0.7777
6204423050	0.9546	0.7777
6204423060	0.9546	0.7777
6204522010	1.2654	1.0309
6204522030	1.2654	1.0309
6204522040	1.2654	1.0309
6204522070	1.0656	0.8681
6204522080	1.0656	0.8681
6204533010	0.2664	0.2170
6204594060	0.2664	0.2170
6204622010	0.9961	0.8115
6204622025	0.9961	0.8115
6204622050	0.9961	0.8115

6204624005	1.2451	1.0144
6204624010	1.2451	1.0144
6204624020	0.9961	0.8115
6204624025	1.2451	1.0144
6204624030	1.2451	1.0144
6204624035	1.2451	1.0144
6204624040	1.2451	1.0144
6204624045	0.9961	0.8115
6204624050	0.9961	0.8115
6204624055	0.9854	0.8028
6204624060	0.9854	0.8028
6204624065	0.9854	0.8028
6204633510	0.2546	0.2074
6204633530	0.2546	0.2074
6204633532	0.2437	0.1985
6204633540	0.2437	0.1985
6204692510	0.249	0.2029
6204692540	0.2437	0.1985
6204699044	0.249	0.2029
6204699046	0.249	0.2029
6204699050	0.249	0.2029
6205202015	0.9961	0.8115
6205202020	0.9961	0.8115
6205202025	0.9961	0.8115
6205202030	0.9961	0.8115
6205202035	1.1206	0.9130
6205202046	0.9961	0.8115
6205202050	0.9961	0.8115
6205202060	0.9961	0.8115
6205202065	0.9961	0.8115
6205202070	0.9961	0.8115
6205202075	0.9961	0.8115
6205302010	0.3113	0.2536
6205302030	0.3113	0.2536
6205302040	0.3113	0.2536
6205302050	0.3113	0.2536
6205302070	0.3113	0.2536
6205302080	0.3113	0.2536
6206100040	0.1245	0.1014
6206303010	0.9961	0.8115
6206303020	0.9961	0.8115
6206303030	0.9961	0.8115
6206303040	0.9961	0.8115
6206303050	0.9961	0.8115
6206303060	0.9961	0.8115
6206403010	0.3113	0.2536
6206403030	0.3113	0.2536

6206900040	0.249	0.2029
6207110000	1.0852	0.8841
6207199010	0.3617	0.2947
6207210030	1.1085	0.9031
6207220000	0.3695	0.3010
6207911000	1.1455	0.9332
6207913010	1.1455	0.9332
6207913020	1.1455	0.9332
6208210010	1.0583	0.8622
6208210020	1.0583	0.8622
6208220000	0.1245	0.1014
6208911010	1.1455	0.9332
6208911020	1.1455	0.9332
6208913010	1.1455	0.9332
6209201000	1.1577	0.9432
6209203000	0.9749	0.7943
6209205030	0.9749	0.7943
6209205035	0.9749	0.7943
6209205040	1.2186	0.9928
6209205045	0.9749	0.7943
6209205050	0.9749	0.7943
6209303020	0.2463	0.2007
6209303040	0.2463	0.2007
6210109010	0.2291	0.1866
6210403000	0.0391	0.0319
6210405020	0.4556	0.3712
6211111010	0.1273	0.1037
6211111020	0.1273	0.1037
6211118010	1.1455	0.9332
6211118020	1.1455	0.9332
6211320007	0.8461	0.6893
6211320010	1.0413	0.8483
6211320015	1.0413	0.8483
6211320030	0.9763	0.7954
6211320060	0.9763	0.7954
6211320070	0.9763	0.7954
6211330010	0.3254	0.2651
6211330030	0.3905	0.3181
6211330035	0.3905	0.3181
6211330040	0.3905	0.3181
6211420010	1.0413	0.8483
6211420020	1.0413	0.8483
6211420025	1.1715	0.9544
6211420060	1.0413	0.8483
6211420070	1.1715	0.9544
6211430010	0.2603	0.2121
6211430030	0.2603	0.2121

6211430040	0.2603	0.2121
6211430050	0.2603	0.2121
6211430060	0.2603	0.2121
6211430066	0.2603	0.2121
6212105020	0.2412	0.1965
6212109010	0.9646	0.7859
6212109020	0.2412	0.1965
6212200020	0.3014	0.2456
6212900030	0.1929	0.1572
6213201000	1.1809	0.9621
6213202000	1.0628	0.8659
6213901000	0.4724	0.3849
6214900010	0.9043	0.7367
6216000800	0.2351	0.1915
6216001720	0.6752	0.5501
6216003800	1.2058	0.9824
6216004100	1.2058	0.9824
6217109510	1.0182	0.8295
6217109530	0.2546	0.2074
6301300010	0.8766	0.7142
6301300020	0.8766	0.7142
6302100005	1.1689	0.9523
6302100008	1.1689	0.9523
6302100015	1.1689	0.9523
6302215010	0.8182	0.6666
6302215020	0.8182	0.6666
6302217010	1.1689	0.9523
6302217020	1.1689	0.9523
6302217050	1.1689	0.9523
6302219010	0.8182	0.6666
6302219020	0.8182	0.6666
6302219050	0.8182	0.6666
6302222010	0.4091	0.3333
6302222020	0.4091	0.3333
6302313010	0.8182	0.6666
6302313050	1.1689	0.9523
6302315050	0.8182	0.6666
6302317010	1.1689	0.9523
6302317020	1.1689	0.9523
6302317040	1.1689	0.9523
6302317050	1.1689	0.9523
6302319010	0.8182	0.6666
6302319040	0.8182	0.6666
6302319050	0.8182	0.6666
6302322020	0.4091	0.3333
6302322040	0.4091	0.3333
6302402010	0.9935	0.8094

6302511000	0.5844	0.4761
6302512000	0.8766	0.7142
6302513000	0.5844	0.4761
6302514000	0.8182	0.6666
6302600010	1.1689	0.9523
6302600020	1.052	0.8571
6302600030	1.052	0.8571
6302910005	1.052	0.8571
6302910015	1.1689	0.9523
6302910025	1.052	0.8571
6302910035	1.052	0.8571
6302910045	1.052	0.8571
6302910050	1.052	0.8571
6302910060	1.052	0.8571
6303110000	0.9448	0.7697
6303910010	0.6429	0.5238
6303910020	0.6429	0.5238
6304111000	1.0629	0.8659
6304190500	1.052	0.8571
6304191000	1.1689	0.9523
6304191500	0.4091	0.3333
6304192000	0.4091	0.3333
6304910020	0.9351	0.7618
6304920000	0.9351	0.7618
6505901540	0.181	0.1475
6505902060	0.9935	0.8094
6505902545	0.5844	0.4761

* * * * *

Dated: January 5, 2005.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–475 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–02–C

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–28]

Donald A. Barbour, Philotechnics; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–40–28) submitted by Mr. Donald A. Barbour, Philotechnics. The petitioner requested that the NRC amend its regulations governing the domestic licensing of source material to provide clarity regarding the effective control of depleted uranium aircraft counterweights held under the exemption in 10 CFR 40.13(c)(5). The petitioner believes that this amendment should address a number of issues concerning the exemption, storage, and disposal of these devices.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, Public File Area Room O1F21, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher; (301) 415–5905; e-mail *cag@nrc.gov.*

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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.*

FOR FURTHER INFORMATION CONTACT: Gary C. Comfort, Jr., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8106, e-mail *gcc1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On January 21, 2000 (65 FR 3394), the NRC published a notice of receipt of a petition for rulemaking filed by Donald A. Barbour, Philotechnics. The petitioner requested that the NRC amend its regulations to provide additional rules for the effective control of depleted uranium aircraft

counterweights. The petitioner believes that this regulatory clarification should address a number of issues concerning the exemption, storage, and disposal of these devices.

The petitioner believes that the amendment should clarify at what point and under what circumstances, the licensing exemption in 10 CFR 40.13(c)(5) is no longer applicable to these devices; the length of time counterweights for which there is no demand or use may be stored as exempt material; the regulations that apply to aircraft that have been removed from service which have depleted uranium counterweights that can be transferred to unlicensed parts dealers and salvage operators; and, the need for radiological surveillance of long-term aircraft storage parks and facilities where aircraft with depleted uranium counterweights are regularly stored for protracted periods under unmonitored conditions. Additionally, the petitioner believes that an immediate notification is necessary to advise those organizations that currently possess depleted uranium aircraft counterweights of their responsibilities to the public. The petitioner asserts that the aviation community is tightly regulated and law abiding and that there are extremely effective channels of communication between the industry and its primary regulator, the Federal Aviation Administration (FAA). The petitioner suggests that the NRC take advantage of this situation by encouraging the FAA to issue an appropriate advisory bulletin that informs the aviation community of its responsibilities for managing depleted uranium counterweights. The petitioner provided a summary of key points which he believes should be considered for incorporation in such a notification.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on April 5, 2000. The NRC received two comment letters from individuals (one of which was from the petitioner himself). Both comment letters supported the petition. The petitioner provided supplementary information in support of the petition including his interpretation of the regulatory background and more detailed descriptions of how counterweights are used in industry. Additionally, the petitioner's comments referenced data related to the potential mishandling of the counterweights. The other commenter provided an example of the potential costs associated with mishandling the counterweights and suggested that distribution requirements should be added to the regulation. By letter dated February 14, 2001, Mr. Barbour provided another supplement to his petition. In this supplement, the petitioner suggested additional rulemaking to (1) specify that only counterweights manufactured from depleted uranium, and not natural uranium, should be covered under the exemption; and (2) clarify the scope of activities allowed to repair or restore counterweight platings or coverings under 10 CFR 40.13(c)(5)(iv).

Reasons for Denial

The NRC is denying the petition because it has determined that current NRC regulations provide adequate clarity and effectively address the petitioner's concerns. The NRC believes that clarification of the regulations for aircraft counterweights, as originally requested by the petitioner, can be most efficiently accomplished through the issuance of guidance rather than through rulemaking.

The NRC issued a regulatory information summary, RIS–01–013, ''10 CFR Part 40 Exemptions For Uranium Contained in Aircraft Counterweights,'' dated July 20, 2001, in response to the petitioner's request for an immediate notification to advise those organizations that currently possess depleted uranium aircraft counterweights of their regulatory responsibilities. This RIS reminds persons holding depleted uranium counterweights that the counterweights may not be modified under the exemption in 10 CFR 40.13(c)(5). The RIS also provides four alternatives to transfer the counterweights from the possessor's inventory: (1) Return the counterweights to the manufacturer or other facility licensed to process source material; (2) transfer the counterweights to another organization that will also use devices as aircraft counterweights; (3) transfer the counterweights for disposal at a facility licensed for disposal of radioactive material; or (4) transfer the counterweights to an unlicensed disposal facility that accepts exempt radioactive material.

The petitioner's primary concern in the original petition is that some persons holding the depleted counterweights may inappropriately accumulate and store the counterweights for lengthy periods of time. The petitioner is concerned that this activity will result in unnecessary exposures and that corrosion of the counterweights could occur resulting in additional pathways of exposure and unnecessary contamination. During resolution of the petition, the NRC evaluated (1) the regulatory history of the exemption, including the safety basis; (2) the current use of depleted uranium aircraft counterweights; and (3) the current language in the exemption.

As part of the evaluation of the petition, the NRC reviewed the regulatory history of the exemption for uranium counterweights. In 1960, the original exemption was implemented to only apply to the counterweight while installed in the aircraft and the counterweight impressed with the label reading ''Caution—Radioactive Material—Uranium.'' This 1960 exemption specifically prohibited the chemical, physical, metallurgical or other treatment or processing of the counterweight and the installation or removal of the counterweight. In 1961, the exemption was expanded to include ''stored or handled in connection with installation or removal of such counterweights from aircraft.'' The 1961 amendment also replaced the prohibition against modification of counterweights with the requirement that there be ''no removal or penetration of the plating'' on the counterweight. In 1969, the exemption was further amended, primarily to change the labeling requirement from ''Caution—Radioactive Material—Uranium'' to ''Depleted Uranium.'' Also, as part of the 1969 amendment, the specific requirement that there be ''no removal or penetration of the plating'' on the counterweight was returned to the prohibition against the chemical, physical, or metallurgical treatment or processing of any such counterweights. Under the 1969 amendment, however, repair or restoration of the plating or other covering was allowed. Finally, a new requirement was added that each counterweight was to be ''durably and legibly labeled or marked'' with the identification of the manufacturer and the statement ''Unauthorized Alterations Prohibited.''

As part of the evaluation of the regulatory history, the NRC also reviewed the health and safety basis used during the initial implementation of the existing regulation. The original implementation was based upon calculations that indicated that exposures from installation and storage would be less than 10 percent of the limits in 10 CFR Part 20, with most of the exposure impacting the hands of the workers. This conclusion was based on a radiation dose rate at the surface of the counterweight of 1.3 millisievert per hour (mSv/hr) (130 millirems per hour [mrem/hr]) of beta and gamma radiation, of which the gamma component contribute only 0.03 mSv/hr (2.7 mrem/hr). Film badge studies from wrist bands

of assembly line personnel verified that the exposures were low, with readings not exceeding 2 mSv (200 mrem) for a 2-month period. Based upon reviews of reported incidents in the Nuclear Material Events Database (NMED), the NRC has no reason to believe that individuals are being significantly impacted by the use of aircraft counterweights under the exemption. In NUREG–1717, ''Systematic Radiological Assessment of Exemptions for Source and Byproduct Material,'' June 2001, a more recent analyses of the exemption was made. This document evaluated the use of counterweights under expected routine uses (including maintenance, flight operations, and storage) and accidents and misuse (including fires and loss of counterweights). The calculated range of exposures for routine operations ranged from a maximum of 0.9 millisievert per year (mSv/yr) (90 millirem per year [mrem/yr]) for maintenance workers to 0.01 mSv/yr (1 mrem/yr) or less for flight crew and warehouse workers (resulting from storage of the counterweights). Potential accident scenarios were calculated to result in exposures of 0.8 mSv/yr (80 mrem/yr) or less to individuals. Because these calculated exposures are within the limits of 10 CFR Part 20 and are expected to impact a minimal number of individuals, NRC does not believe that the use of uranium counterweights under the current exemption have, or will, result in a significant impact to public health and safety or the environment.

NRC's review has also indicated that depleted uranium counterweights are no longer being introduced into new aircraft. Furthermore, existing depleted uranium counterweights are generally being replaced, when replacement is needed, with counterweights made from tungsten. As a result, the number of depleted uranium counterweights in aircraft is diminishing, thus further reducing the need to revise the regulation because the number of individuals potentially being impacted should also decrease as time passes.

The current language for the exemption in 10 CFR 40.13(c)(5) includes ''uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of such counterweights. * * *'' Based upon a review of the actual language and the regulatory history, it is clear that the exemption applies to storage only to the extent that the storage is in connection with the planned installation or recent removal from the aircraft. As such, the exemption does not include long-term storage unless it can be clearly shown that such storage is related to an intent to reuse the counterweight and that the counterweight continues to be maintained (*i.e.*, the plating and labeling remain intact).

Similarly, if an aircraft containing depleted uranium counterweights is permanently removed from service, the counterweights should be removed from the former aircraft within a reasonable time period. The definition of an aircraft according to FAA regulations found in 14 CFR 1.1 is ''a device that is used or intended to be used for flight in the air.'' Therefore, if there is no clear intention to continue to use the aircraft for flight, the counterweights would no longer be considered ''installed in the aircraft'' under the exemption in 10 CFR 40.13(c)(5). Instead, the counterweight would be considered ''stored'' on the former aircraft. A counterweight stored on a former aircraft would be held with conditions similar to those conditions that apply to counterweights stored in connection with installation or removal (*i.e.*, long-term storage is not permitted in the former aircraft under the exemption). Should an aircraft be held for possible future use, but not operated for a lengthy period of time, the holder should maintain the aircraft per its FAA maintenance plan, including a periodic inspection of the counterweights to ensure the counterweights remain in proper condition (*i.e.*, the plating and labeling remain intact).

In cases where the counterweights are no longer planned to be used or specifically licensed, the counterweights may still be covered under the exemption during a reasonable period while arrangements are made to properly transfer the counterweights, as long as the counterweights continue to be maintained in proper condition (*i.e.*, the counterweights plating and labeling remain intact). The period of storage allows holders of the counterweights to: (1) Determine the future use of the counterweights; (2) decide on appropriate transfer or disposal alternatives if they are no longer to be used; and (3) accumulate several counterweights, within a reasonable time frame, in order to permit a more economical one-time disposal. The exemption also applies to persons temporarily holding the material during transit or if the material is mistakenly sent to a recycle or scrap yard, if the counterweight is properly maintained and transferred within a reasonable period of time using an option listed in RIS–01–013.

The NRC recognizes that some counterweights have been inappropriately sent to scrap yards or recyclers in the past. As the petitioner points out, a review of data in NMED indicates that alarms have been set off at scrap yards. The current exemption does not expressly prohibit transfers to any persons, including scrap yards or recyclers. However, the physical, metallurgical, or chemical modification of the counterweight is prohibited; therefore, counterweights should not be sent to locations where, in all likelihood, they will be altered or modified. Further, the detection and recovery of counterweights inappropriately sent to scrap yards or recyclers can lead to additional costs for the transferor or recipient. Although the NRC could amend the existing exemption to prohibit transfers to recyclers or scrap yards, the NRC does not believe that such an amendment would significantly reduce the number of these inappropriate transfers. The current regulation requires that counterweights held under this exemption must be labeled ''Unauthorized Alterations Prohibited.'' The NRC believes that persons who have inappropriately transferred counterweights to a recycle or scrap yard, despite the existing labeling on the counterweight, may not be aware of the prohibitions listed in the exemption itself. If a regulation requiring reporting of transfers were implemented, the transfer report might make it easier to identify the transferor so that appropriate action to retrieve the counterweight could be taken. However, the NRC believes that if someone were aware of these reporting requirements, they would likely be cognizant that the transfer to a recycler or a scrap yard is not allowed to begin with.

During resolution of the petition, the NRC considered additional options for rulemaking that might clarify the intent of this regulation and increase control over the use of depleted uranium aircraft counterweights. The NRC considered two types of rulemaking actions: (1) Specific licensing and (2) development of a general license specifically applicable to aircraft counterweights. In both cases, the NRC's analysis concluded that any benefits of the action were small compared to the costs and potential impacts associated with the action.

In the case of specific licensing, the costs to the industry and government would involve development and review of applications, and inspection of the new licensees. Because the NRC has no evidence to indicate that public health and safety is significantly impacted under the current exemption, the NRC believes the costs to implement specific

licensing would outweigh the benefits of licensing. Additionally, should counterweights be required to be held under a specific license, disposal alternatives would be reduced to disposal in a low-level waste site which would further increase the regulatory burden and costs related to this action.

Although implementation of a general license would presumably add additional requirements to those found in the existing exemption, the general license would be less burdensome to both holders of the counterweights and the government than a specific license. However, the NRC believes that the costs related to regulatory development and implementation are still believed to outweigh any benefits that might be achieved by the creation of a general license. As with specific licensing, the options for disposal could be limited to low-level waste facilities, thus increasing the regulatory burden and costs for disposal. Although the NRC could develop a general license which allows some of the same disposal/transfer options that are currently available, State regulations and/or the licenses of disposal facilities may preempt the utilization of those options.

The NRC determined that modifying the exemption in 10 CFR 40.13(c)(5) or increasing the regulatory structure (through a new general license or specifically licensing the holders), pursuant to the petitioner's request would add little, if any, additional benefits to the protection of public health and safety. Therefore, the NRC is denying the petitioner's request that the exemption in 10 CFR 40.13(c)(5) be amended to clarify the requirements for storage. However, the NRC believes that most of the petitioner's apparent goals can be better achieved by publication of guidance in the form of a new RIS. The purpose of the guidance would be to clarify the intent of the existing regulations related to storage of depleted uranium aircraft counterweights. The NRC would issue the guidance to known holders of aircraft counterweights and other agencies and organizations that may have occasion to be interested in counterweights.

In a supplement to this petition (February 2001), the petitioner suggested that 10 CFR 40.13(c)(5) should be amended to clarify that only counterweights manufactured from depleted uranium, and not natural uranium, are covered under the exemption. Currently 10 CFR 40.13(c)(5) begins ''Uranium contained in.* * *.'' The petitioner identifies an apparent inconsistency with the labeling requirements in 10 CFR 40.13(c)(5)(ii) that require the counterweight to be impressed with ''Depleted Uranium.'' As a result, the petitioner states that the exemption should be more specific to begin the exemption with ''Depleted uranium contained in.* * *.''

A historical review of this issue indicates that the exemption was originally meant to apply to counterweights manufactured from both natural uranium and depleted uranium. On July 18, 1969 (34 FR 12107), a proposed rule was published in the **Federal Register** proposing to modify the regulation to require that the counterweights be impressed with the word ''Uranium'' rather than ''Caution—Radioactive Material—Uranium,'' as was required before the 1969 amendment. However, when the final rule was published on September 5, 1969 (34 FR 14067), the regulation required the counterweight to be impressed with the words ''Depleted Uranium,'' as exists in the current regulation. No explanation for this change was mentioned in the **Federal Register** notice or Commission papers related to this action. The presumption is that this change was made because most, if not all, aircraft counterweights were and have been made of depleted uranium. The cost of depleted uranium is significantly less than the cost of natural uranium. While the NRC believes that the modification in 1969 effectively limits the exemption to include only depleted uranium counterweights because of the new labeling requirement, the NRC also believes the generic use of the word uranium at the start of the exemption is still necessary because footnote 2 to 10 CFR 40.13(c)(5) grandfathers counterweights properly labeled and made before June 30, 1969. These counterweights may have included a small number of natural uranium counterweights. The NRC is denying this issue in the petition to allow for the possibility that there are some counterweights still in existence that were made from natural uranium prior to 1969.

The petitioner also requested that the NRC modify its regulations in 10 CFR 40.13(c)(5)(iv) to better delineate the scope of activities allowed as part of the repair or restoration of the plating or covering of an aircraft counterweight. The petitioner is concerned that some activities could impact the depleted uranium within the counterweight. The paragraph in question states ''The exemption contained in this paragraph shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or any other covering.'' The intent of this paragraph is to delineate the scope of activities allowed under the exemption. Although the counterweight may be modified to restore or repair the plating or covering around the counterweight, the depleted uranium within the counterweight cannot be altered at any time under the exemption, even as part of restoration or repair of the plating or other covering. As a result, actions such as chemical baths, sanding of oxidized depleted uranium, or electroplating, each of which would likely result in modification of the depleted uranium counterweight itself, are not permitted under the exemption. However, repainting or placing a new covering over the counterweight (to the extent it does not interact with the depleted uranium in the counterweight) is permitted under the exemption as the long as the impressings and other required markings remain legible as required under 10 CFR 40.13(c)(5)(ii) and (iii). The NRC is denying this issue in the petition because it has been determined that the existing regulation conforms with the petitioner's request and does not require additional clarification through rulemaking. However, the NRC believes that it may be worthwhile to provide additional guidance related to this aspect of the exemption. Therefore, the NRC plans to address this issue in the proposed RIS by clarifying the intent of the existing regulations related to the restoration and repair of depleted uranium counterweights.

In conclusion, no new information has been provided by the petitioner to support the petitioner's request that additional rulemaking is necessary at this time. Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected. Additional rulemaking would impose unnecessary regulatory burden and does not appear to be warranted. However, NRC does believe that some additional clarification, as originally requested by the petitioner, can be provided through guidance. Therefore, the NRC plans to issue a regulatory information summary which will provide clarification of the existing exemption as related to (1) long-term storage of the counterweights, (2) restoration and repair of the counterweights, and (3) removal of the counterweights from aircraft, rockets, projectiles, and missiles.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 6th day of January, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–589 Filed 1–11–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20011; Directorate Identifier 2003–NM–22–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain EMBRAER Model EMB–135 and –145 series airplanes. The existing AD currently requires revising the airplane flight manual (AFM) to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flightcrew. This proposed AD would add an optional revision to the AFM that allows limited APU starts and would add a terminating action. This proposed AD is prompted by the airplane manufacturer developing modifications that revise or eliminate the need for restrictions to in-flight APU starts. We are proposing this AD to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment.

DATES: We must receive comments on this proposed AD by February 11, 2005.

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

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

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20011; the directorate identifier for this docket is 2003–NM–22–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20011; Directorate Identifier 2003–NM–22–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On May 7, 2001, we issued AD 2001–10–01, amendment 39–12226 (66 FR 24049, May 11, 2001), for certain EMBRAER Model EMB–135 and EMB–145 series airplanes. That AD requires revising the FAA-approved Airplane Flight Manual (AFM) to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew. That AD was prompted by reports that two APU fire alarms were triggered during in-flight APU starts. We issued that AD to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment.

Actions Since Existing AD Was Issued

Since we issued AD 2001–10–01, the airplane manufacturer has developed modifications specified in several service bulletins that allow for a change to restrictions placed on in-flight APU starts as well as the elimination of the need for restrictions placed on in-flight APU starts. We have determined that these modifications address the identified unsafe condition and enable operators to do in-flight APU starts.

Also, the preamble to AD 2001–10–01 explains that we considered the requirements of that AD ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

EMBRAER has issued the following service bulletins:

- EMBRAER Alert Service Bulletin 145–49–A017, dated April 12, 2001, which describes procedures for installing a placard in the pedestal panel.
- EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001, which describes procedures for measuring the gap between the APU and the APU exhaust silencer, installing a flush-type APU air inlet, part number (P/N) 120–45060–001, installing a

placard, and contacting the manufacturer if measurements are not within the limits specified in the service bulletin. The service bulletin also specifies prior to or concurrent accomplishment of EMBRAER Service Bulletin 145–49–0009.

• EMBRAER Service Bulletin 145–49–0018, Change 03, dated January 3, 2002, which describes procedures for measuring the gap between the APU and the APU exhaust silencer, installing a flush-type APU air inlet, P/N 145–48999–401, removing a placard, reidentifying the APU cowling, and contacting the manufacturer if measurements are not within the limits specified in the service bulletin. The service bulletin also specifies prior to or concurrent accomplishment of EMBRAER Service Bulletin 145–49–0009.

• EMBRAER Service Bulletin 145–49–0009, Change 07, dated September 1, 2002, which describes procedures for installing an APU silencer.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Departmento de Aviacao Civil (DAC) issued Brazilian airworthiness directive 2001–04–02R2, dated June 29, 2001, to ensure the continued airworthiness of these airplanes in Brazil. The Brazilian airworthiness directive references procedures specified in the service information.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would supersede AD 2001–10–01. This proposed AD would retain the actions required in AD 2001–10–01. The proposed AD would also require accomplishing the actions specified in the service bulletins described previously, as applicable, except as discussed under ''Difference Between the Proposed AD and Service Bulletins.''

Difference Between Proposed AD and Service Bulletins

EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001; and EMBRAER Service Bulletin 145–49–0018, Change 03, dated January 3, 2002; specify that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions using a method that we or the DAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DAC approve would be acceptable for compliance with this proposed AD.

Differences Between Proposed AD and Foreign AD

Operators should note the following differences between the proposed AD and Brazilian airworthiness directive 2001–04–02R2, dated June 29, 2001:

The Brazilian airworthiness directive references EMBRAER Service Bulletin 145–49–0009, Revision 03, dated May 15, 2001, for accomplishing the optional terminating action. This proposed AD specifies that terminating action be done within 8,000 flight hours after the effective date of the AD in accordance with EMBRAER Service Bulletin 145–49–0009, Change 07, dated September 1, 2002. We have not given credit for actions done with previous issues of the service bulletin because there is additional work needed in Change 07 of the service bulletin. Mandating the terminating action is based on our determination that, in this case, long-term continued operational safety would be better ensured by a modification to remove the source of the problem, rather than by revising flight procedures. While revising flight procedures ensures that the flightcrew is informed that an unsafe condition may exist, it does not remove the source of that unsafe condition. Human factors (*e.g.,* variations in flightcrew training and familiarity with the airplane, flightcrew awareness in the presence of other hazards, and flightcrew fatigue) may allow an inadvertent APU start and result in the unsafe condition. Thus, revisions to flight procedures are not considered adequate to provide the degree of safety assurance necessary for the transport airplane fleet. Consideration of these factors has led the FAA to mandate the terminating action.

The Brazilian airworthiness directive also references EMBRAER Service Bulletin 145–49–0018, original issue, or further revisions, for accomplishing the optional terminating action. This proposed AD specifies the terminating action also be done in accordance with EMBRAER Service Bulletin 145–49–0018, Change 03, dated January 3, 2002. We have not given credit for actions done with previous issues of the service bulletin because there is additional work needed in Change 03 of the service bulletin.

These differences have been coordinated with the Brazilian airworthiness authority.

Clarification of Applicability

AD 2001–10–01 has an applicability that specifies ''* * * with Hamilton Sundstrand Power Systems auxiliary power unit (APU) model T–62T–40C14 (APS 500R).'' This proposed AD has an applicability that specifies ''* * * with Hamilton Sundstrand auxiliary power unit (APU) model T–62T–40C14 (APU 500R).'' The ''S'' in APS 500R of the applicability of AD 2001–10–01 is a typographical error; APU 500R is the correct nomenclature. We also revised the nomenclature of the APU manufacturer from Hamilton Sundstrand Power Systems to Hamilton Sundstrand, which matches the nomenclature specified in the Brazilian airworthiness directive.

Change to Existing AD

This proposed AD would retain all requirements of AD 2001–10–01. Since AD 2001–10–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2001–10–01	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f)

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of placard (required by AD 2001–10–01)	1	$65	None	$65	290	$18,850
Terminating action (new proposed action)	4	65	$1,514	1,774	290	514,460
Concurrent action (new proposed action)	6	65	38,500	38,890	290	11,278,100
Optional installation of APU air inlet and placard (new proposed optional action).	2	65	397	527	290	([1])

[1] Depends on # of airplanes on which installation is done.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12226 (66 FR 24049, May 11, 2001) and adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–20011; Directorate Identifier 2003–NM–22–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by February 11, 2005.

Affected ADs

(b) This AD supersedes AD 2001–10–01, amendment 39–12226 (66 FR 24049, May 11, 2001).

Applicability

(c) This AD applies to EMBRAER Model EMB–135 and –145 series airplanes, certificated in any category, equipped with Hamilton Sundstrand auxiliary power unit (APU) model T–62T–40C14 (APU 500R).

Unsafe Condition

(d) This AD was prompted by the airplane manufacturer developing modifications that revise or eliminate the need for restrictions to in-flight APU starts. We are issuing this AD to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment.

Compliance

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

Requirements of AD 2001–10–01, Amendment 39–12226 and New Note

Airplane Flight Manual (AFM) Revision

(f) Within 25 flight hours or 10 days after May 29, 2001 (the effective date of AD 2001–10–01), whichever occurs first, accomplish the actions required by paragraphs (f)(1) and (f)(2) of this AD.

(1) Install a placard on or near the APU start/stop switch panel that reads:

''CAUTION: IN-FLIGHT APU STARTS ARE PROHIBITED''

Note 1: Installing a placard in accordance with EMBRAER Alert Service Bulletin 145–49–A017, dated April 12, 2001, is acceptable for compliance with the action required by paragraph (f)(1) of this AD.

(2) Revise the Limitations section of the AFM to include the information on the placard, as specified in paragraph (f)(1) of this AD, and to limit APU starts to ground conditions only. This may be accomplished by inserting a copy of this AD in the AFM.

Note 2: Because APU starts are prohibited in flight when an engine-driven generator is inoperative, the APU must be started on the ground in order to dispatch, and the APU must be kept operational for the entire flight.

Terminating Requirements of This AD and Optional Action

Optional New Limitations for APU Starts

(g) Doing the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001, terminates the requirements of paragraph (f) of this AD.

(1) Measure the gap between the APU and the APU exhaust silencer, install a flush-type APU air inlet, and install or replace, as applicable, the placard on or near the APU start/stop switch panel with a placard that reads:

''CAUTION: IN-FLIGHT APU STARTS ARE LIMITED TO FLIGHT ENVELOPE UP TO 15KFT/320KIAS (NORMAL APU STARTS) OR 15KFT/200KIAS (BATTERY SUPPORT ONLY)''

(2) Revise the Limitations section of the AFM to include the information on the placard specified in paragraph (g)(1) of this AD to limit APU starts. This may be accomplished by inserting a copy of this AD

in the AFM. Remove any existing copy of AD 2001–10–01 from the AFM.

Terminating Action for This AD

(h) Within 8,000 flight hours after the effective date of this AD, measure the gap between the APU and the APU exhaust silencer, install a flush type APU air inlet, remove any placard on or near the APU start/stop switch panel that limits APU starts, and reidentify the APU cowling, in accordance with EMBRAER Service Bulletin 145–49–0018, Change 03, dated January 3, 2002, except as provided by paragraph (j) of this AD. Doing the actions in paragraph (h) of this AD terminates the requirements of paragraphs (f) and (g) of this AD and any copy of AD 2001–10–01 or this AD may be removed from the AFM.

Prior to or Concurrent Requirements

(i) Prior to or concurrently with the actions specified in paragraphs (g) and (h) of this AD, install an APU silencer in accordance with EMBRAER Service Bulletin 145–49–0009, Change 07, dated September 1, 2002.

Contact the FAA or Departmento de Aviacao Civil (DAC)

(j) If, during the actions required by paragraphs (g) and (h) of this AD, any measurement exceeds the limits specified in EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001; or EMBRAER Service Bulletin 145–49–0018, Change 03, dated January 3, 2002; as applicable; and the service bulletin specifies to contact EMBRAER: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DAC (or its delegated agent).

Actions Accomplished According to Previous Issue of Service Bulletin

(k) Actions accomplished before the effective date of this AD according to EMBRAER Service Bulletin 145–49–0017, dated May 15, 2001, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2001–10–01, amendment 39–12226, are approved as AMOCs for the corresponding requirements in paragraph (f) of this AD.

Related Information

(m) Brazilian airworthiness directive 2001–04–02R2, dated June 29, 2001, also addresses the subject of this AD.

Issued in Renton, Washington, on December 30, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–539 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20023; Directorate Identifier 2004–NM–49–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 707 airplanes and Model 720 and 720B series airplanes. The existing AD currently requires a preventive modification of the front spar fitting on the outboard engine nacelle. This proposed AD would remove the requirement to do this preventive modification, and would require repetitive inspections for cracking of the front spar fitting of the inboard and outboard nacelle struts, and replacement of any cracked fitting with a new fitting. The proposed AD would also apply to more airplanes. This proposed AD is prompted by a report indicating that a crack was found in a front spar fitting that had been replaced as part of the modification required by the existing AD. We are proposing this AD to detect and correct this cracking, which could result in reduced structural integrity of the engine nacelle, and consequent separation of an engine from the airplane.

DATES: We must receive comments on this proposed AD by February 28, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20023; the directorate identifier for this docket is 2004–NM–49–AD.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20023; Directorate Identifier 2004–NM–49–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

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

Discussion

On August 20, 2001, we issued AD 2001–17–24, amendment 39–12415 (66 FR 45572, August 29, 2001), for certain Boeing Model 707 airplanes and 720 and 720B series airplanes. That AD requires a preventive modification of the front spar fitting on the outboard engine nacelle. That AD was prompted by reports indicating that fatigue cracks have been found in the front spar fitting on the outboard engine nacelle. We issued that AD to prevent this fatigue cracking, which could reduce the structural integrity of the nacelle and result in separation of the engine from the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2001–17–24, we have received a report indicating that a crack was found in a front spar fitting that had been previously modified as required by AD 2001–17–24. This report led to a determination that the currently required modification is not effective in preventing the previously identified unsafe condition.

Since we issued AD 2001–17–24, we have also determined that the front spar fitting on the inboard engine nacelle may also be subject to the same unsafe condition found on the outboard engine nacelle.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin A3514, dated July 29, 2004. The service bulletin describes procedures for performing repetitive detailed inspections for cracking of the upper surface of the front spar fitting of nacelle struts 1, 2, 3, and 4; and replacing any cracked fitting with a new fitting.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. This proposed AD would supersede AD 2001–17–24. This proposed AD would remove the requirement to do the preventive modification of the front spar fitting on the outboard engine nacelle. This proposed AD would require repetitive inspections for cracking of the front spar fitting of the inboard and outboard nacelle struts, and replacement of any cracked fitting with a new fitting. The proposed AD would also apply to more airplanes because it would apply to airplanes having front spar fittings previously modified during production.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Costs of Compliance

There are about 290 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (new proposed action)	8	$65	None	$520, per inspection cycle	87	$45,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12415 (66 FR 45572, August 29, 2001) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20023; Directorate Identifier 2004–NM–49–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by February 28, 2005.

Affected ADs

(b) This AD supersedes AD 2001–17–24, amendment 39–12415 (66 FR 45572, August 29, 2001).

Applicability

(c) This AD applies to Boeing Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category; having line numbers 1 through 1012 inclusive.

Unsafe Condition

(d) This AD was prompted by a report indicating that a crack was found in a front spar fitting that had been replaced as part of the modification required by AD 2001–17–24, amendment 39–12415. We are issuing this AD to detect and correct this cracking, which could result in reduced structural integrity of the engine nacelle, and consequent separation of an engine from the airplane.

Compliance

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

Inspection

(f) Prior to the accumulation of 3,500 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later: Do a detailed inspection for cracking of the front spar fitting of the inboard and outboard nacelles according to the Accomplishment Instructions of Boeing Alert Service Bulletin A3514, dated July 29, 2004. Repeat the inspection thereafter at intervals not to exceed 700 flight hours.

Note 1: There is no terminating action at this time for the repetitive inspections required by paragraph (f) of this AD.

Replacement

(g) If any cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, replace the cracked front spar fitting with a new fitting, according to the Accomplishment Instructions of Boeing Alert Service Bulletin A3514, dated July 29, 2004.

Parts Installation

(h)(1) As of October 3, 2001 (the effective date of AD 2001–17–24, amendment 39–12415), no person may install a front spar fitting, part number 65–2532 or 65–2532–5, on the outboard engine nacelle on any airplane.

(2) As of the effective date of this AD, no person may install, on any airplane, a front spar fitting having a part number other than the part numbers specified in paragraph 2.C.2. of Boeing Alert Service Bulletin A3514, dated July 29, 2004.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for any repair that is required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on December 30, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–537 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20034; Directorate Identifier 2004–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This proposed AD would require doing repetitive detailed inspections for accumulation of debris (blockage) of the drain holes of the pitot tubes, and cleaning if any evidence of debris is found. This proposed AD is prompted by reports of blocked drain holes of the pitot tubes. We are proposing this AD to prevent blocked drain holes of the pitot tubes, which could result in the accumulation of water in the pitot-static system and consequent failure of that system. Failure of the pitot-static system could result in erroneous airspeed indications in the cockpit and consequent loss of airspeed control.

DATES: We must receive comments on this proposed AD by February 28, 2005.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20034; the directorate identifier for this docket is 2004–NM–178–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2005–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2005–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–

2005–20034; Directorate Identifier 2004–NM–178–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

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

Discussion

On November 6, 1996, a McDonnell Douglas Model MD–11 airplane departed the end of the runway after landing in instrument meteorological conditions in Buenos Aires, Argentina. During approach to landing, the flight crew had several in-flight advisories, and the airplane excessively vibrated. The vibration was attributed to a flap overspeed condition caused by erroneous airspeed indications. Investigation revealed that the pitot-static system had accumulated a significant amount of water. The drain holes on two of the three pitot tubes were completely blocked by debris. The third pitot tube had one drain hole totally blocked and the other hole partially blocked.

In 1997, a similar incident of blocked drain holes of the pitot tubes occurred on another Model MD–11 airplane. Although the design of the pitot-static system was reviewed and found to meet FAA regulations, we determined that the maintenance task cards used by operators lacked sufficient detail about inspecting the drain holes of the pitot tubes. To correct this, in 2002, Boeing issued a report recommending additional maintenance actions. Since then there have been additional similar incidents, indicating that the manufacturer's recommendations have not been fully implemented.

Blocked drain holes of the pitot tubes, if not corrected, could result in the accumulation of water in the pitot-static system and consequent failure of that system. Failure of the pitot-static system could result in erroneous airspeed indications in the cockpit and consequent loss of airspeed control.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require doing repetitive detailed inspections (*i.e.*, visual and forced-air checks) for accumulation of debris (blockage) of the drain holes of the pitot tubes, and cleaning if any evidence of debris is found. These inspections must be done by certificated maintenance personnel.

Costs of Compliance

There are about 314 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 216 airplanes of U.S. registry. The proposed inspections would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $28,080, or $130 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2005–20034; Directorate Identifier 2004–NM–178–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by February 28, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of blocked drain holes of the pitot tubes. We are issuing this AD to prevent blocked drain holes of the pitot tubes, which could result in the accumulation of water in the pitot-static system and consequent failure of that system. Failure of the pitot-static system could result in erroneous airspeed indications in the cockpit and consequent loss of airspeed control.

Compliance

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

Repetitive Inspections

(f) Within 90 days after the effective date of this AD, do a detailed inspection for accumulation of debris (blockage) of the drain holes of the pitot tubes in accordance with paragraphs (g) and (h) of this AD. The actions required by paragraph (g) must be done before those in paragraph (h) of this AD. Repeat the inspection thereafter at intervals not to exceed 650 flight hours.

Note 1: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Visual Check

(g) Do a visual check in accordance with paragraphs (g)(1) through (g)(3) of this AD. The visual check must be done by certificated maintenance personnel.

(1) Make certain that the pitot heat is off and the pitot tubes are not hot.

Note 2: Caution. Exercise care in checking pitot tubes to prevent severe burns to your hands.

(2) Attempt to look through the left and right drain holes of each pitot tube.

(3) Make sure that ambient light (or flashlight) is visible through both drain holes of each pitot tube.

Forced Air Check

(h) Do a forced air check in accordance with paragraphs (h)(1) through (h)(3) of this AD. The forced air check must be done by certificated maintenance personnel.

Note 3: Exercise care in checking pitot tubes to prevent severe burns to your hands.

(1) Make certain that the pitot heat is off and the pitot tubes are not hot.

Note 4: Excessive, as well as sudden, pressurization or depressurization applied to a pitot system by either method can cause damage to instruments. Do not exceed 9.0 pounds per square inch (psi) or 550 knots when pressurizing the system. Do not exceed 1.0 psi per second or 90 knots per second when pressurizing or depressurizing the system.

(2) Three methods are given in Table 1 of this AD. Only one test must be done and all are equivalent.

TABLE 1.—THREE TEST METHODS

Method	Description
(i) 1	(A) Install a 9/16 inch (14 millimeter (mm)) inner diameter hose approximately three feet (1 meter) long to the end of the pitot tube; and (B) Use the hose to carefully blow air (using your mouth) into the pitot tube.
(ii) 2	(A) Connect an air pressure source (dry Nitrogen) to the pitot tubes; and (B) Adjust the pressure source to 5-psi maximum.
(iii) 3	(A) Connect a pitot static test set; and (B) Adjust it to 450 knots at 0-feet altitude maximum.

(3) Check for airflow out of each drain hole. Make sure that you do not cover the drain holes when checking.

Special Test Equipment

(i) If test method 3 in paragraph (h)(2)(iii) of this AD is used, an air data line tester with pitot and static port adapters is required.

Corrective Action

(j) If any evidence of drain hole blockage (*e.g.*, air exiting from any pitot drain hole cannot be felt on the hand) is found during any inspection required by paragraph (f), (g), or (h) of this AD, before further flight, clean the hole in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Chapter 34–11–02 of the applicable Boeing airplane maintenance manual is one approved method.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on December 30, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–615 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20026; Directorate Identifier 2004–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–400ER, 777–200, and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–400ER, 777–200, and 777–300 series airplanes. This proposed AD would require replacing, with new parts, the existing tie-down fitting studs that secure galleys, purser work stations, and closets to the seat tracks. This proposed AD is prompted by a report that tie-down fitting studs were found damaged. We are proposing this AD to prevent a galley, purser work station, or closet from detaching from the tie-down fitting studs during an emergency landing, which could injure passengers or crewmembers, or obstruct escape routes and impede emergency evacuation.

DATES: We must receive comments on this proposed AD by February 28, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20026; the directorate identifier for this docket is 2004–NM–150–AD.

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6433; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20026; Directorate Identifier 2004–NM–150–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that tie-down fitting studs, which secure galleys, purser work stations, and closets to the seat tracks, have been found cracked or deformed on a Boeing 777–200 series airplane during production. Investigation revealed that the original torque values were too high, which damaged the fitting studs during installation. This condition, if not corrected, could result in a galley, purser work station, or closet detaching from the tie-down fitting studs during an emergency landing, which could injure passengers or crewmembers, or obstruct escape routes and impede emergency evacuation.

The subject tie-down fitting studs were also installed on Boeing Model 767–400ER and 777–300 series airplanes using the same original torque values used on Model 777–200 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Service Bulletins 767–25–0338, dated October 9, 2003; and 777–25–0217, dated July 17, 2003. Those service bulletins describe procedures for replacing, with new parts, the existing tie-down fitting studs that secure galleys, purser work stations, and floor-mounted closets to the seat tracks. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between the Proposed AD and Service Information

The compliance time for the actions that would be required by the proposed AD differs from the compliance times recommended in the service information. Boeing Service Bulletin 767–25–0338 recommends doing the actions ''at the next maintenance period when manpower and facilities are available.'' Boeing Service Bulletin 777–25–0217 recommends doing the actions at the ''next convenient maintenance opportunity, not to exceed 7 years from the initial release'' of the service bulletin. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the time necessary to perform the proposed actions. In light of all of these factors, we find that a 60-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have coordinated this difference with Boeing, and they concur with our proposed compliance time.

Costs of Compliance

There are about 349 airplanes of the affected design in the worldwide fleet, including about 118 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $65 per hour.

ESTIMATED COSTS

Airplane model	Work hours (for U.S.-registered airplanes)	Parts	Cost per airplane	No. of U.S.-registered airplanes	Fleet cost
767–400ER	10	$6,221	$6,871	6	$41,226
777–200 and –300	[1] 6–30	1,464–19,761	1,854–21,711	118	218,772–2,561,898

[1] Depending on configuration.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–20026; Directorate Identifier 2004–NM–150–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by February 28, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–400ER series airplanes, certificated in any category, having Variable Numbers VQ071 through VQ076 inclusive; and Model 777–200 and –300 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 777–25–0217, dated July 17, 2003.

Unsafe Condition

(d) This AD was prompted by a report that tie-down fitting studs were found damaged. We are issuing this AD to prevent a galley, purser work station, or closet from detaching from the tie-down fitting studs during an emergency landing, which could injure passengers or crewmembers, or obstruct escape routes and impede emergency evacuation.

Compliance

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

Replacement

(f) Within 60 months after the effective date of this AD: Replace, with new parts, the existing tie-down fitting studs that secure galleys, purser work stations, and floor-mounted closets to the seat tracks, by doing all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25–0338, dated October 9, 2003 (for Boeing Model 767–400ER series airplanes); or Boeing Service Bulletin 777–25–0217, dated July 17, 2003 (for Boeing Model 777–200 and –300 series airplanes); as applicable.

Replacements Accomplished According to Previous Issue of Service Bulletin

(g) For Boeing Model 777–200 and –300 series airplanes: Replacements accomplished before the effective date of this AD according to Boeing Service Bulletin 777–25–0217, dated July 18, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on December 30, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–614 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–168–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That action would have required installing shield assemblies for power feeder cables in the forward and aft lower cargo compartments, and installing an additional shield for the power feeder cable of the auxiliary power unit in the aft lower cargo compartment. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has determined that the proposed requirements are included in the requirements of another existing AD; the NPRM does not contain any new requirements beyond those of the existing AD. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 30, 2003 (68 FR

61772). The proposed rule would have required installing shield assemblies for power feeder cables in the forward and aft lower cargo compartments, and installing an additional shield for the power feeder cable of the auxiliary power unit in the aft lower cargo compartment. That action was prompted by several incidents of migration of power feeder cable troughs on McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. The proposed actions were intended to prevent a cable from chafing against an edge of a lightening hole, which could result in electrical arcing, and consequent smoke/fire in the lower cargo compartments.

Response to Comments

We have considered the comments that have been submitted on the proposed AD. One commenter points out that an existing AD, AD 94–09–02, amendment 39–8890 (59 FR 18720, April 20, 1994), currently requires accomplishment of the original issue of Boeing Service Bulletin MD80–24–100. The commenter further states that all affected airplanes listed in Revision 04 of that service bulletin (referenced as the appropriate source of service information in the proposed rule) were affected by the previous revisions of that service bulletin, and that the proposed rule contains no new requirements beyond those required by the existing AD.

We agree. We have determined that the requirements of the proposed rule are included in the requirements of another existing AD. The existing AD, AD 94–09–02, is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987, and McDonnell Douglas Model MD–80 Service Bulletin 24–100, dated March 30, 1988. That AD requires an inspection to detect damage of the auxiliary power unit (APU) power feeder cable installation, repair of damaged cables, modification of the cable installation, and an inspection of previously modified airplanes to determine whether a spacer or ''stand off'' has been installed, and installation of those items, if necessary. That action was prompted by reports of generator power feeder cables electrically shorting to the airplane structure due to chafing. The requirements of that AD are intended to prevent the APU power feeder cable from chafing against adjacent structures, which could result in electrical shorting and arcing, and a fire below the cabin floor.

Additionally, AD 94–09–02 references McDonnell Douglas MD–80 Service Bulletin 24–100, dated March 30, 1988, as the appropriate source of service information for accomplishing the modification. The proposed rule references McDonnell Douglas Alert Service Bulletin MD80–24A100, Revision 04, dated January 24, 2000, as the appropriate source of service information for accomplishing the modification (installing shield assemblies for power feeder cables). Revision 04 was issued merely to elevate the service bulletin to the ''alert'' status and to reference AD 94–09–02; no additional work is required. All airplanes affected by Revision 04 are also affected by the previous revisions of the service bulletin.

The proposed rule does not contain any new requirements beyond those required by AD 94–09–02. Accomplishment of the requirements of AD 94–09–02 adequately addresses the identified unsafe condition.

FAA's Conclusions

Upon further consideration, the FAA has determined that the proposed requirements are included in the requirements of another existing AD; the proposed rule does not contain any new requirements beyond those of the existing AD. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–168–AD, published in the **Federal Register** on October 30, 2003 (68 FR 61772), is withdrawn.

Issued in Renton, Washington, on January 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–613 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20025; Directorate Identifier 2004–NM–208–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A330, A340–200, and A340–300 series airplanes. This proposed AD would require repetitive inspections of a certain bracket that attaches the flight deck instrument panel to the airplane structure, replacement of the bracket with a new, improved bracket, and related investigative and corrective actions if necessary. This proposed AD is prompted by reports of cracking of a certain bracket that attaches the flight deck instrument panel to the airplane structure. We are proposing this AD to detect and correct a cracked bracket. Failure of this bracket, combined with failure of the horizontal beam, could result in collapse of the left part of the flight deck instrument panel, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by February 11, 2005.

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

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

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Belonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20025; the directorate identifier for this docket is 2004–NM–208–AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20025; Directorate Identifier 2004–NM–208–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Génénrale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A330, A340–200, and A340–300 series airplanes. The DGAC advises that a certain bracket, one of eight parts that attaches the flight deck instrument panel to airplane structure, has been found cracked on several airplanes. In one case, the bracket was completely broken. The cracking has been attributed to tightening of the bracket during assembly, combined with further effects of differential pressure and flight loads. Failure of the bracket cannot be detected without an inspection. If the horizontal beam also fails, failure of this bracket could lead to collapse of the left part of the flight deck instrument panel, and consequent reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletins A330–25–3227 and A340–25–4230, both including Appendix 01, both dated June 17, 2004. The service bulletins describe procedures for performing repetitive detailed visual inspections of a certain bracket that attaches the flight deck instrument panel to airplane structure, and replacing the bracket with a new, improved bracket if necessary. If both flanges of the bracket are cracked, the service bulletin recommends contacting Airbus for further action. The DGAC mandated the service information and issued French airworthiness directives F–2004–140 and F–2004–141, both dated August 18, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirement of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the Proposed AD, the French Airworthiness Directives, and the Service Information.'' The proposed AD would also require sending the inspection results for any cracked bracket to Airbus.

Differences Among the Proposed AD, the French Airworthiness Directives, and the Service Information

If you find both flanges of a subject bracket broken, the service information and French airworthiness directives F–2004–140 and F–2004–141 instruct you to contact Airbus. This proposed AD would require that, if you find both flanges of a bracket broken, before further flight, you replace the bracket and perform any applicable related investigative and corrective actions in accordance with a method approved by the FAA or the DGAC (or its delegated agent). These related investigative and corrective actions may include inspections for damage to surrounding structure caused by the broken bracket, and corrective actions for any damage that is found.

For Model A330 series airplanes, Airbus Service Bulletins A330–25–3227 and French airworthiness directive F–2004–140 specify an initial inspection threshold of 16,500 total flight cycles. This proposed AD would require you to perform the initial inspection prior to the accumulation of 16,500 total flight cycles or within 60 days after the effective date of the AD, whichever is later. We have included a 60-day grace period to ensure that any airplane that is close to or has passed the 16,500-total-flight-cycle threshold is not grounded as of the effective date of the AD.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the Airbus service bulletins is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Costs of Compliance

This proposed AD would affect about 19 Model A330 series airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,235, or $65 per airplane, per inspection cycle.

There are currently no affected Model A340–200 and –300 series airplanes of U.S. registry. However, if one of these airplanes is imported and put on the U.S. Register in the future, this cost estimate will also apply to those airplanes.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–20025; Directorate Identifier 2004–NM–208–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by February 11, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330, A340–200, and A340–300 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracking of a certain bracket that attaches the flight deck instrument panel to the airplane structure. We are issuing this AD to detect and correct a cracked bracket. Failure of this bracket, combined with failure of the horizontal beam, could result in collapse of the left part of the flight deck instrument panel, and consequent reduced controllability of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Airbus Service Bulletins A330–25–3227 (for Model A330 series airplanes) and A340–25–4230 (for Model A340–200 and –300 series airplanes), both including Appendix 01, and both dated June 17, 2004, as applicable.

Initial Inspection

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, perform a detailed inspection of the bracket having part number (P/N) F2511012920000, which attaches the flight deck instrument panel to airplane structure, in accordance with the service bulletin.

(1) For Model A330 series airplanes: Prior to the accumulation of 16,500 total flight cycles, or within 60 days after the effective date of this AD, whichever is later.

(2) For Model A340–200 and –300 series airplanes: Prior to the accumulation of 9,700 total flight cycles, or within 2,700 flight cycles after the effective date of this AD, whichever is later.

Note 1. For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

No Cracking/Repetitive Inspections

(h) If no cracking is found during the initial inspection required by paragraph (g) of this AD: Repeat the inspection thereafter at the applicable interval specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For Model A330 series airplanes: Intervals not to exceed 13,800 flight cycles.

(2) For Model A340–200 and –300 series airplanes: Intervals not to exceed 7,000 flight cycles.

Crack Found/Replacement, Reporting, and Repetitive Inspections

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Do the actions in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, except as provided by paragraph (j) of this AD.

(1) Before further flight: Replace the cracked bracket with a new, improved bracket having P/N F2511012920095, in accordance with the service bulletin.

(2) Within 30 days after performing the inspection, or within 30 days after the effective date of this AD, whichever is later: Report the cracked fitting to Airbus, Department AI/SE–A21, 1 Round Point Maurice Bellonte, 31707 Blagnac Cedex, France. The report must include the airplane serial number, the number of flight cycles and flight hours on the airplane, the date of the inspection, and whether both flanges of a bracket are broken. Submitting Appendix 01 of the applicable service bulletin is acceptable for compliance with this paragraph. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(3) Inspect the replaced bracket at the time specified in paragraph (i)(3)(i) or (i)(3)(ii) of this AD. Then, do repetitive inspections or replace the bracket as specified in paragraph (h) or (i) of this AD, as applicable.

(i) For Model A330 series airplanes: Within 16,500 flight cycles.

(ii) For Model A340–200 and –300 series airplanes: Within 9,700 flight cycles.

(j) If both flanges of a bracket are broken: Before further flight, replace the bracket and

perform any applicable related investigative and corrective actions (which may include inspections for damage to surrounding structure caused by the broken bracket, and corrective actions for any damage that is found), in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) French airworthiness directives F–2004–140 and F–2004–141, both dated August 18, 2004, also address the subject of this AD.

Issued in Renton, Washington, on December 30, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–612 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19897; Directorate Identifier 2004–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B airplanes. This proposed AD would require you to modify or replace the co-pilot rudder pedal assembly. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. We are issuing this proposed AD to prevent binding of the co-pilot rudder pedal assembly due to premature wear of the bushing, which could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by February 11, 2005.

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

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

To get the service information identified in this proposed AD, contact Eagle Aircraft (Malaysia) Sdn. Bhd., P.O. Box 1028, Pejabat Pos Besar, Melanka, Malaysia, 75150; telephone: 011 (606) 317–4105; facsimile: 011 (606) 317–7213.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2004–19897.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19897; Directorate Identifier 2004–CE–45–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19897. 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.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What events have caused this proposed AD? The Department of Civil Aviation, Malaysia (DCA), which is the airworthiness authority for Malaysia, recently notified FAA that an unsafe condition may exist on certain Eagle Aircraft Sdn. Bhd. Model Eagle 150B airplanes. The DCA reports two incidents of the co-pilot rudder pedal assembly, part number (P/N) 2720D07–02, binding and becoming inoperable during flight.

Investigation revealed that the two incidents resulted from premature wear of the bushing, P/N 2720D08–39, in the co-pilot rudder pedal assembly. Premature wear of the bushing allowed it to slide out of the housing resulting in excessive play between the co-pilot rudder pedal assembly and the shaft. That condition caused the co-pilot rudder control pushrod pivot, P/N 2720D08–31/04, to bind with the co-pilot pivot arms, P/N 2720D08–42.

Stronger material is now used to manufacture the bushing and it has also been improved by including side stoppers.

What is the potential impact if FAA took no action? If not corrected, binding of the co-pilot rudder pedal assembly could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

Is there service information that applies to this subject? Eagle Aircraft Sdn. Bhd. has issued Mandatory Service Bulletin SB 1095, dated September 9, 2003; Optional Service Bulletin SB 1096, dated September 9, 2003; and Optional Service Bulletin SB 1097, dated September 9, 2003.

What are the provisions of this service information? Eagle Aircraft Mandatory Service Bulletin SB 1095, dated September 9, 2003, includes procedures for disengaging and removing the co-pilot rudder pedal assembly, part number (P/N) 2720D07–02.

Eagle Aircraft Optional Service Bulletin SB 1096, dated September 9, 2003, includes procedures for modifying the existing co-pilot rudder pedal assembly, P/N 2720D07–02, from a welded to a bolted design to allow individual parts replacement within the assembly and includes instructions for incorporating rudder control stoppers.

Eagle Aircraft Optional Service Bulletin SB 1097, dated September 9, 2003, includes procedures for replacing the existing co-pilot rudder pedal assembly, P/N 2720D07–02, with a new bolted design co-pilot rudder pedal assembly, P/N 2720D07–10.

What action did the DCA take? The DCA classified these service bulletins as mandatory and issued Malaysian CAM AD 002–10–2004, Issue date: October 30, 2004, to ensure the continued airworthiness of these airplanes in Malaysia.

Did the DCA inform the United States under the bilateral airworthiness agreement? These Eagle 150B airplanes are manufactured in Malaysia and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the DCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the DCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Eagle 150B airplanes of the same type design that are registered in the United States, we are proposing AD action to prevent binding of the co-pilot rudder pedal assembly due to premature wear of the bushing, which could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

What would this proposed AD require? This proposed AD would require you to modify or replace the co-pilot rudder pedal assembly.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 13 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed modification:

Labor hours	Parts cost	Total cost per airplane
4 work hours × $65 per hour = $260. Eagle Aircraft has agreed to reimburse for the cost of labor.	Eagle Aircraft has agreed to provide the parts without cost	Not applicable.

We estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane
3 work hours × $65 per hour = $195	$1,440	$1,635

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19897; Directorate Identifier 2004–CE–45–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eagle Aircraft (Malaysia) SdN. BhD.: Docket No. FAA–2004–19897; Directorate Identifier 2004–CE–45–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by February 11, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model Eagle 150B airplanes, manufacturer serial numbers (MSN) 016 through 042, that are:

(1) Equipped with a co-pilot rudder pedal assembly welded design, part number (P/N) 2720D07–02; and

(2) Certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. We are issuing this AD to prevent binding of the co-pilot rudder pedal assembly due to premature wear of the bushing, which could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the co-pilot rudder pedal assembly welded design, part number (P/N) 2720D07–02, for cracks. (i) If cracks are found, replace the assembly with a new bolted design co-pilot rudder pedal assembly, P/N 2720D07–10. (ii) If no cracks are found, either: (A) Modify P/N 2720D07–02 by replacing the rudder control bushing with a new P/N 2720D08–39 and installing a rudder control stopper, P/N 2720D08–44; or (B) Replace P/N 2720D07–02 with a new bolted design co-pilot rudder pedal assembly, P/N 2720D07–10.	Inspect within 30 days after the effective date of this AD. If cracks are found during the inspection, before further flight replace the rudder pedal assembly. If no cracks are found during the inspection, before further flight, modify or replace the rudder pedal assembly.	To inspect and modify the rudder pedal assembly, follow Eagle Aircraft Optional Service Bulletin SB 1096, dated September 16, 2003. To replace the rudder pedal assembly, follow Eagle Aircraft Optional Service Bulletin SB 1097, dated September 16, 2003.
(2) Do not install a co-pilot rudder pedal assembly, P/N 2720D07–02, unless it has been inspected and modified as required in paragraphs (e)(1) and (e)(1)(ii)(A) of this AD.	As of the effective date of this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri, 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

What if I Need To Fly the Airplane To Another Location to Comply With This AD?

(g) The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that the following is adhered to:

(1) Remove the co-pilot rudder pedal assembly, P/N 2720D07–02, from installation following Eagle Aircraft Mandatory Service Bulletin SB 1095, dated September 16, 2003; and

(2) Install a temporary placard in a visible place on the instrument panel that has the following wording:

''WARNING: CO-PILOT RUDDER PEDAL IS NON-FUNCTIONAL.''

Is There Other Information That Relates to This Subject?

(h) Malaysia CAM AD 002–10–2004, Issue date: October 30, 2004, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(i) To get copies of the documents referenced in this AD, contact Eagle Aircraft, P.O. Box 1028, Pejabat Pos Besar, Melaka, Malaysia, 75150; telephone: 011 (606) 317–4105; facsimile: 011 (606) 317–7213. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2004–19897.

Issued in Kansas City, Missouri, on January 5, 2005.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–606 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 041029301–4301–01]

RIN 0607–AA44

Requirement for Reporting the Kimberley Process Certificate Number for Exports (Reexports) of Rough Diamonds

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) proposes to amend the Foreign Trade Statistics Regulations (FTSR) to incorporate the requirement for reporting the Kimberley Process Certificate (KPC) number for the exports (reexports) of rough diamonds filed through the Automated Export System (AES) in accordance with the Clean Diamond Trade Act. This rule would serve to carry out the purposes of Executive Order 13312 of July 29, 2003, which implemented the Clean Diamond Trade Act and the Kimberley Process

Certification Scheme in the United States.

DATES: Submit written comments on or before February 11, 2005.

ADDRESSES: Please direct all written comments on this proposed rule to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233. You may also submit comments, identified by RIN number, to the Federal e-Rulemaking Portal: *http://www.regulations.gov*. Please follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, by phone at (301) 763–2255, by fax at (301) 457–2645, or by e-mail: *c.harvey.monk.jr@census.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2003, the President issued Executive Order 13312, which implemented Public Law 108–19, known as the Clean Diamond Trade Act (the Act). The Act implemented the Kimberley Process in the United States by authorizing the President to prohibit the importation into or the exportation from the United States of any rough diamond, from whatever source, unless the rough diamond is controlled through the Kimberley Process Certification Scheme, as defined in the Act. This means shipments of rough diamonds between the United States and nonparticipants in the Kimberley Process are prohibited, and shipments between the United States and participants are permitted only if they are handled in accordance with the standards, practices, and procedures of the Kimberley Process set forth in the Rough Diamonds Control Regulations, 31 CFR part 592, promulgated by the Department of the Treasury's Office of Foreign Assets Control (OFAC) (see 69 FR 56936 dated September 23, 2004).

Section 6 of the Act names the Census Bureau as the exporting authority for the United States. This requires the Census Bureau to validate the KPC for exports of rough diamonds. The KPC is a forgery-resistant document of a participant nation or entity that demonstrates that an exportation of rough diamonds has been controlled through the Kimberley Process and contains the minimum elements required by OFAC regulations (31 CFR part 592). Each KPC is assigned an identification number called the KPC number.

To comply with the requirements of the Act, the Census Bureau amended the FTSR on October 20, 2003, to incorporate requirements for the mandatory electronic filing via the AES of exports of rough diamonds. The Census Bureau proposes to amend the FTSR to require the reporting through AES of the KPC number found on the KPC for all exports of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31. This requirement will not affect filers of Shipper's Export Declarations since all exports of rough diamonds are required to be filed through the AES.

Shipments of rough diamonds from the United States must also meet additional Department of the Treasury requirements identified in the Office of Foreign Assets Control's Rough Diamonds Control Regulations, Title 31, CFR, Part 592.

To further the implementation of the Clean Diamonds Trade Act and Executive Order 13312, which implements the Act, the Census Bureau proposes to amend § 30.63 of the FTSR to specify the requirement for reporting the KPC number via the AES for exports of rough diamonds.

The Departments of State, the Treasury, and Homeland Security concur with the provisions contained in this notice of proposed rulemaking.

Rulemaking Requirements

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have significant impact on a substantial number of small entities. This action would require that U.S. Principal Parties in Interest (USPPIs) or authorized agents in the United States report the KPC number along with current data filing requirement to the AES. Only those USPPIs or agents filing information on exports of rough diamonds would be required to report the KPC number. The SBA's table of size standards indicates that businesses that are the USPPI or authorized agent and file export information are considered small businesses if they employ less than 500 people.

The Census Bureau estimates that approximately 1,600 shipments of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 were exported from the United States in 2003. There were on average 47 exporters exporting rough diamonds each month during 2003. This number of exporters reflects those companies that actually exported rough diamonds. We do not know the total population of exporters of rough diamonds. Of the total number of rough diamond exporters, the number that are small entities also is unknown. The Census Bureau estimates that it will take 7 seconds to report the KPC number in AES, which is 10 total burden hours on all exporters. Because the new requirement imposes only a small burden on affected entities, this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required and has not been prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12806. It has been determined that this rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

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 (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. This rule contains a collection-of-information subject to the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and that has been approved under OMB control number 0607–0152. Since the KPC number is readily available to the exporting company and the number of exporting companies affected by this revision is small, there will only be a minimal net increase (estimated at 10 total burden hours) in respondent burden. We will request OMB to approve this respondent burden increase.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 15 CFR part 30, is proposed to be amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; 19 U.S.C. 3901–3913; Reorganization Plan 5 of 1950 (3 CFR 1949–1953 Comp., 1004); E.O. 13312; and Department of Commerce Organization Order No. 35–2A,

July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

2. In § 30.63, add a paragraph (b)(22) to read as follows:

§ 30.63 Information required to be reported electronically through AES (data elements).

* * * * *

(b) * * *

(22) *Kimberley Process Certificate (KPC) number.* The unique identifying number of the KPC issued by the United States Kimberley Process Authority that must accompany any export shipment of rough diamonds. Rough diamonds are classified under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31. Enter the KPC number in the license number field excluding the 2-digit U.S. ISO country code.

* * * * *

Dated: January 7, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05–597 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–07–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice of Intent To Request Public Comments

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission rules and guides, the Commission gives notice that, during 2005, it intends to request public comments on the two rules listed below. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rules; possible conflict between the rules and state, local, or other federal laws or regulations; and the effect on the rules of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the rules should be inferred from the intent to publish request for comments. In addition, the Commission announces a revised 10-year regulatory review schedule.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contract person listed for the particular rule.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rules during 2005:

(1) Children's Online Privacy Protection Rule, 16 CFR part 312. Agency Contracts: Karen Muoio, (202) 326–2491, and Rona Kelner, (202) 326–2752, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580.

(2) Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets Rule, 16 CFR part 410. Agency Contact: Neil Blickman, (202) 326–3038, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580.

As part of its ongoing program to review all current Commission rules and guides, the Commission also has tentatively scheduled reviews of other rules and guides for 2006 through 2015. A copy of this tentative schedule is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX

REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE

16 CFR Part	Topic	Year to review
18	Guides for the Nursery Industry	2006
311	Recycled Oil Rule	2006
444	Credit Practices Rule	2006
455	Used Car Rule	2006
24	Guides for Select Leather and Imitation Leather Products	2007
435	Mail or Telephone Order Merchandise Rule	2007
500	Regulations Under Section 4 of the Fair Packaging and Labeling Act (FPLA)	2007
501	Exemptions from Part 500 of the FPLA	2007
502	Regulations Under Section 5(C) of the FPLA	2007
503	Statements of General Policy or Interpretations Under the FPLA	2007
424	Retail Food Store Advertising and Marketing Practices Rule	2008
305	Appliance Labeling Rule	2008
306	Automotive Fuel Ratings, Certification and Posting Rule	2008
429	Cooling Off Rule	2008
601	Summary of Consumer Rights, Notice of User Responsibilities, and Notice of Furnisher Responsibilities under the Fair Credit Reporting Act.	2008
254	Guides for Private Vocational and Distance Education Schools	2009
260	Guides for the use of Environmental Marketing Claims	2009
300	Rules and Regulations under the Wool Products Labeling Act	2009
301	Rules and Regulations under the Fur Products Labeling Act	2009
303	Rules and Regulations under the Textile Fiber Products Identification Act	2009
425	Rule Concerning the Use of Negative Option Plans	2009
239	Guides for the Advertising of Warranties and Guarantees	2010
433	Preservation of Consumers' Claims and Defenses Rule	2010
700	Interpretations of Magnuson-Moss Warranty Act	2010
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2010
702	Pre-sale Availability of Written Warranty Terms	2010
703	Informal Dispute Settlement Procedures	2010

REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE—Continued

16 CFR Part	Topic	Year to review
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2011
423	Care Labeling Rule	2011
14	Administrative Interpretations, General Policy Statements, and Enforceable Policy Statements	2011
20	Guides for the Rebuilt, Reconditions and Other Used Automobile Parts Industry	2012
233	Guides Against Deceptive Pricing	2012
238	Guides Against Bait Advertising	2012
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2012
251	Guide Concerning Use of the Word ''Free'' and Similar Representations	2012
259	Guide Concerning Fuel Economy Advertising for New Automobiles	2012
310	Telemarketing Sales Rule	2013
801	Hart-Scott-Rodino Antitrust Improvements Act Coverage Rules	2013
802	Hart-Scott-Rodino Antitrust Improvements Act Exemption Rules	2013
803	Hart-Scott-Rodino Antitrust Improvements Act Transmittal Rules	2013
304	Rules and Regulations under the Hobby Protection Act	2014
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2014
314	Standards for Safeguarding Customer Information	2014
456	Ophthalmic Practice Rules	2015

[FR Doc. 05–593 Filed 1–11–05; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–130671–04]

RIN 1545–BD65

Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the requirements for filing corporate income tax returns, S corporation returns, and returns of organizations required under section 6033 on magnetic media under section 6011(e) of the Internal Revenue Code (Code). The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 28, 2005. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for March 16, 2005, must be received by February 28, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–130671–04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–130671–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS internet Web site at *http://www.irs.gov/regs,* or via the Federal eRulemaking Portal, *http://www.regulations.gov* (IRS–REG–130671–04). The public hearing will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael E. Hara, (202) 622–4910 concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Procedure and Administration (26 CFR part 301) relating to the filing of corporate income tax returns, S corporation returns, and returns of organizations required under section 6033 on magnetic media under section 6011(e). The temporary regulations require corporations and certain organizations to file their Form 1120, ''U.S. Corporation Income Tax Return,'' Form 1120S, ''U.S. Income Tax Return for an S Corporation,'' Form 990, ''Return of Organization Exempt From Income Tax,'' and Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation,'' electronically if they are required to file at least 250 returns during the calendar year ending with or within their taxable year. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The IRS and Treasury Department note that these regulations only prescribe the method of filing returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute.

Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require Forms 1120, Forms 1120S, Forms 990, or Forms 990–PF to be filed electronically unless 250 or more returns are required to be filed.

Further, if a taxpayer's operations are computerized, reporting in accordance with the regulations should be less

costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of filing Forms 1120, Forms 1120S, Forms 990, and Forms 990–PF electronically should be minimal in most cases because of the availability of computer service bureaus. In addition, the proposed regulations provide that the IRS may waive the electronic filing requirements upon a showing of hardship.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. The IRS and Treasury Department also request comments on the procedures and criteria for hardship waivers from the electronic filing requirements. The IRS and Treasury Department also request comments on the accuracy of the certification that the regulations in this document will not have a significant economic impact on a substantial number of small entities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 16, 2005 at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by February 28, 2005.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Michael E. Hara, Office of the Assistant Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.6011–5 is added to read as follows:

§ 1.6011–5 Required use of magnetic media for corporate income tax returns.

[The text of proposed § 1.6011–5 is the same as the text of § 1.6011–5T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.6033–4 is added to read as follows:

§ 1.6033–4 Required use of magnetic media for returns by organizations required to file returns under section 6033.

[The text of proposed § 1.6033–4 is the same as the text of § 1.6033–4T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.6037–2 is added to read as follows:

§ 1.6037–2 Required use of magnetic media for income tax returns of electing small business corporations.

[The text of proposed § 1.6037–2 is the same as the text of § 1.6037–2T published elsewhere in this issue of the **Federal Register**].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 is amended by adding entries, in numerical order, to read as follows:

Authority: 26 U.S.C. 7805 * *

Section 301.6011–5 also issued under 26 U.S.C. 6011. * * *

Section 301.6033–4 also issued under 26 U.S.C. 6033. * * *

Section 301.5037–2 also issued under 26 U.S.C. 6037. * * *

Par. 6. Section 301.6011–5 is added to read as follows:

§ 301.6011–5 Required use of magnetic media for corporate income tax returns.

[The text of proposed § 301.6011–5 is the same as the text of § 301.6011–5T published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 301.6033–4 is added to read as follows:

§ 301.6033–4 Required use of magnetic media for returns by organizations required to file returns under section 6033.

[The text of proposed § 301.6033–4 is the same as the text of § 3011.6033–4T published elsewhere in this issue of the **Federal Register**].

Par. 8. Section 301.6037–2 is added to read as follows:

§ 301.6037–2 Required use of magnetic media for returns of electing small business corporation.

[The text of proposed § 301.6037–2 is the same as the text of § 301.6037–2T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–648 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–148867–03]

RIN 1545–BC92

Disclosure of Returns and Return Information in Connection With Written Contracts or Agreements for the Acquisition of Property and Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the disclosure of returns and return information pursuant to section 6103(n) of the Internal Revenue Code (Code). The proposed regulations describe the circumstances under which officers or employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice may disclose returns and return information to obtain property or services for tax administration purposes, pursuant to a written contract or agreement. The proposed regulations clarify the existing regulations with respect to redisclosures of returns or return information by contractors, especially with regard to redisclosures by contractors to agents or subcontractors, and clarify that the civil and criminal penalties of sections 7431, 7213, and 7213A apply to the agents or subcontractors. The proposed regulations also clarify that section 6103(n) applies to written contracts or agreements that are entered into to obtain property or services for purposes of tax administration, including contracts that are not awarded under the Federal Acquisition Regulations (FAR), 48 CFR pts. 1 through 53.

The proposed regulations will affect officers and employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice who disclose returns or return information in connection with a written contract or agreement for the acquisition of property or services for tax administration purposes. The proposed regulations will also affect any person, or officer, employee, agent, or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information in connection with a written contract or agreement for the acquisition of property or services.

DATES: Written or electronic comments and requests for a public hearing must be received by April 12, 2005.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–148867–03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148867–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–148867–03). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by March 14, 2005. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6103(n)–1(d) and (e)(3). This information is required and will be used to ensure compliance with the internal revenue laws and regulations, and to protect the privacy of American taxpayers. The collections of information are required to obtain a benefit. The likely respondents are state or local governments, business or other for-profit institutions, federal agencies, and/or small businesses or organizations.

Estimated total annual reporting burden: 250 hours. *Estimated average annual burden per respondent:* 6 minutes.

Estimated number of respondents: 2500.

Estimated annual frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 6103(a), returns and return information are confidential unless the Code authorizes disclosure. Section 6103(n) authorizes, pursuant to regulations prescribed by the Secretary, returns and return information to be disclosed to any person, including any person described in section 7513(a), for purposes of tax administration, to the extent necessary in connection with: (1) The processing, storage, transmission, and reproduction of returns and return information; (2) the programming, maintenance, repair, testing, and procurement of equipment; and (3) the providing of other services.

Clarification is needed with respect to whether the existing regulations permit redisclosures by persons authorized to receive the returns and return information to their agents or subcontractors, and if so, whether certain penalty provisions, written notification requirements, and safeguard requirements are applicable to these agents and subcontractors. The proposed regulations make these clarifications. The existing regulations provide that any person, or officer or employee of the person, who receives returns or return information under the existing regulations, may redisclose the returns or return information when authorized in writing by the IRS. The proposed regulations clarify that redisclosures to agents or subcontractors are permissible provided that the IRS authorizes the redisclosures in writing. The proposed regulations clarify that agents and subcontractors are persons described in section 6103(n) and, accordingly, are subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of returns or return information. The proposed regulations clarify that agents

and subcontractors are required to comply with any written notification requirements and safeguard restrictions that may be imposed by the IRS.

Finally, the proposed regulations clarify that section 6103(n) applies to written contracts or agreements that are entered into to obtain property or services for tax administration purposes, including contracts that are not awarded under the FAR.

Explanation of Provisions

The structure of the proposed regulations is very similar to that of the existing regulations, with the exception of modifications to clarify: The redisclosure authority of contractors, especially to agents or subcontractors; the applicability to agents and subcontractors of written notification requirements, safeguard requirements, and the civil and criminal penalty provisions of sections 7431, 7213, and 7213A; and the applicability of section 6103(n) to written contracts or agreements for tax administration purposes, including contracts that are not awarded under the FAR. The proposed regulations also elaborate on the safeguard protections that the IRS may require. Finally, the proposed regulations contain other minor changes for organizational and clarity purposes.

Redisclosures to Agents or Subcontractors

The proposed regulations, at § 301.6103(n)–1(a)(2)(ii), provide that any person, or officer or employee of the person, who receives returns or return information under the proposed regulations, may further disclose the returns or return information, when authorized in writing by the IRS, to the extent necessary to carry out the purposes of the written contract or agreement. To eliminate any ambiguity as to whether this provision applies to agents and subcontractors, the proposed regulation states that disclosures may include redisclosures to a person's agent or subcontractor, or officer or employee of the agent or subcontractor. The proposed regulations, at § 301.6103(n)–1(a)(3), provide guidance applicable if agents or subcontractors, or officers or employees of the agents or subcontractors, who receive returns or return information under § 301.6103(n)–1(a)(2)(ii), are to exercise the authority to redisclose the returns or return information to another officer or employee of the agent or subcontractor whose duties or responsibilities require the returns or return information for a purpose described in the proposed regulations. The proposed regulations, at § 301.6103(n)–1(c), set forth the civil and criminal penalties to which agents, subcontractors, and their officers or employees, are subject for unauthorized inspection or disclosure of returns or return information. The proposed regulations, at § 301.6103(n)–1(d), extend the written notification requirements to agents and subcontractors. In particular, agents or subcontractors who receive returns or return information under the proposed regulations must provide written notice to their officers and employees of the purposes for which returns or return information may be used and of the potential civil and criminal penalties for unauthorized inspections or disclosures. The proposed regulations, at § 301.6103(n)–1(e), clarify that agents or subcontractors who receive returns or return information under the proposed regulations are subject to all safeguard requirements described in the proposed regulations.

Section 6103(n) Applies to Written Tax Administration Contracts or Agreements, Including Contracts Not Awarded Under the FAR

The proposed regulations clarify that section 6103(n) applies to written contracts or agreements that are entered into to obtain property or services for purposes of tax administration, including contracts that are not awarded under the FAR. The existing regulations use the term *contractual procurement* to describe the acquisition of property or services. Clarification is needed as to whether this term is limited to the acquisition of property or services under the FAR or whether the term refers more broadly to any written contract or agreement to acquire property or services relating to tax administration. The FAR applies only to contracts involving acquisitions with appropriated funds. FAR 1.104 and 2.101, 48 CFR 1.104 and 2.101. The existing and proposed regulations under section 6103(n), however, are intended to apply to any written contract or agreement for tax administration that creates obligations that are enforceable or otherwise recognizable at law, regardless of the form of the contract (*e.g.,* interagency agreement, memorandum of understanding, purchase order), the statutory or regulatory authority for the contract, if any (*e.g.,* the FAR, the Contract Disputes Act, 41 U.S.C. 601 through 613, the Economy Act, 31 U.S.C. 1535), or the nature of the consideration exchanged (monetary or non-monetary). Accordingly, the proposed regulations replace the term *contractual procurement* with the phrase ''written contract or agreement'' in all instances where the term appeared.

Other Changes to the Existing Regulations

The proposed regulations, at § 301.6103(n)–1(a)(4), clarify that any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under the proposed regulations, may redisclose the returns or return information pursuant to § 301.6103(p)(2)(B)–1 (concerning disclosures by a Federal, State, or local agency, or its agents or contractors, for a purpose authorized, and subject to all applicable conditions imposed, by section 6103). The proposed regulations, at § 301.6103(n)–1(e), add the requirement that any person, or agent or subcontractor of the person, who may receive returns or return information under the proposed regulations, must agree, before the disclosure of any returns or return information to the person, agent, or subcontractor, to an IRS inspection of his, her, or its site or facilities. Finally, the proposed regulations, at § 301.6103(n)–1(e)(3), set forth the condition that before the execution of a contract or subcontract for the acquisition of property or services under which returns or return information will be disclosed in accordance with the proposed regulations, the contract must be made available to the IRS.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that any burden on taxpayers is minimal in that the estimated average burden per respondent for complying with the collections of information imposed by these regulations is 6 minutes. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2 Section 301.6103(n)–1 is revised to read as follows:

§ 301.6103(n)–1 Disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property and services for tax administration purposes.

(a) *General rule.* (1) Pursuant to the provisions of section 6103(n) of the Internal Revenue Code and subject to the conditions of this section, officers and employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, are authorized to disclose returns and return information (as defined in section 6103(b)) to any person (including, in the case of the Treasury Department, any person described in section 7513(a)), or to an officer or employee of the person, for purposes of tax administration (as defined in section 6103(b)(4)), to the extent necessary in connection with a written contract or agreement for the acquisition of—

(i) Equipment or other property; or

(ii) Services relating to the processing, storage, transmission, or reproduction of returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services.

(2) Any person, or officer or employee of the person, who receives returns or return information under paragraph (a)(1) of this section, may—

(i) Further disclose the returns or return information to another officer or employee of the person whose duties or responsibilities require the returns or return information for a purpose described in this paragraph; or

(ii) Further disclose the returns or return information, when authorized in writing by the Internal Revenue Service (IRS), to the extent necessary to carry out the purposes described in this paragraph. Disclosures may include disclosures to an agent or subcontractor of the person, or officer or employee of the agent or subcontractor.

(3) An agent or subcontractor, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a)(2)(ii) of this section, may further disclose the returns or return information to another officer or employee of the agent or subcontractor whose duties or responsibilities require the returns or return information for a purpose described in this paragraph (a).

(4) Any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under this paragraph, may, subject to the provisions of § 301.6103(p)(2)(B)-1 (concerning disclosures by a Federal, State, or local agency, or its agents or contractors), further disclose the returns or return information for a purpose authorized, and subject to all applicable conditions imposed, by section 6103.

(b) *Limitations.* (1) Disclosure of returns or return information in connection with a written contract or agreement for the acquisition of property or services described in paragraph (a) of this section will be treated as necessary only if the performance of the contract or agreement cannot otherwise be reasonably, properly, or economically carried out without the disclosure.

(2) Disclosure of returns or return information in connection with a written contract or agreement for the acquisition of property or services described in paragraph (a) of this section shall be made only to the extent necessary to reasonably, properly, or economically perform the contract. For example, disclosure of returns or return information to employees of a contractor for purposes of programming, maintaining, repairing, or testing computer equipment used by the IRS or a State tax agency shall be made only if the services cannot be reasonably, properly, or economically performed without the disclosure. If it is determined that disclosure of returns or return information is necessary, and if the services can be reasonably, properly, and economically performed by disclosure of only parts or portions of a return or if deletion of taxpayer identity information (as defined in section 6103(b)(6)) reflected on a return would not seriously impair the ability of the employees to perform the services, then only the parts or portions of the return, or only the return with taxpayer identity information deleted, may be disclosed.

(c) *Penalties.* Any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, is subject to the civil and criminal provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of the returns or return information.

(d) *Notification requirements.* Any person, or agent or subcontractor of the person, who receives returns or return information under paragraph (a) of this section shall provide written notice to his, her, or its officers and employees receiving the returns or return information that—

(1) Returns or return information disclosed to the officer or employee may be used only for a purpose and to the extent authorized by paragraph (a) of this section;

(2) Further inspection of any returns or return information for a purpose or to an extent not authorized by paragraph (a) of this section constitutes a misdemeanor, punishable upon conviction by a fine of as much as $1,000, or imprisonment for as long as 1 year, or both, together with costs of prosecution;

(3) Further disclosure of any returns or return information for a purpose or to an extent not authorized by paragraph (a) of this section constitutes a felony, punishable upon conviction by a fine of as much as $5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution;

(4) Further inspection or disclosure of returns or return information by any person who is not an officer or

employee of the United States for a purpose or to an extent not authorized by paragraph (a) of this section may also result in an award of civil damages against that person in an amount not less than $1,000 for each act of unauthorized inspection or disclosure, or the sum of actual damages sustained by the plaintiff as a result of the unauthorized inspection or disclosure plus, in the case of a willful inspection or disclosure or an inspection or disclosure that is the result of gross negligence, punitive damages. In addition, costs and reasonable attorneys fees may be awarded; and

(5) A conviction for an offense referenced in paragraph (c)(2) or (3) of this section shall, in addition to any other punishment, result in dismissal from office or discharge from employment if the person convicted is an officer or employee of the United States.

(e) *Safeguards.* (1) Any person, or agent or subcontractor of the person, who may receive returns or return information under paragraph (a) of this section, shall agree, before disclosure of any returns or return information to the person, agent, or subcontractor, to permit an inspection by the IRS of his, her, or its site or facilities.

(2) Any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, shall comply with all applicable conditions and requirements as the IRS may prescribe from time to time (prescribed requirements) for the purposes of protecting the confidentiality of returns and return information and preventing disclosures or inspections of returns or return information in a manner not authorized by this section.

(3) The terms of any written contract or agreement for the acquisition of property or services as described in paragraph (a) of this section shall provide, or shall be amended to provide, that any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, shall comply with the prescribed requirements. Any contract or agreement shall be made available to the IRS before execution of the contract or agreement. For purposes of this paragraph (e)(3), a written contract or agreement shall include any contract or agreement between a person and an agent or subcontractor of the person to provide the property or services described in paragraph (a) of this section.

(4) If the IRS determines that any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, has failed to, or does not, satisfy the prescribed requirements, the IRS may take any actions it deems necessary to ensure that the prescribed requirements are or will be satisfied, including—

(i) Suspension of further disclosures of returns or return information by the IRS to the State tax agency, the Social Security Administration, or the Department of Justice, until the IRS determines that the conditions and requirements have been or will be satisfied;

(ii) Suspension of further disclosures by the Treasury Department otherwise authorized by paragraph (a) of this section; and

(iii) Suspension or termination of any duty or obligation arising under a contract or agreement with the Treasury Department.

(f) *Definitions.* For purposes of this section—

(1) The term *Treasury Department* includes the IRS, the Office of the Chief Counsel for the IRS, and the Office of the Treasury Inspector General for Tax Administration;

(2) The term *State tax agency* means an agency, body, or commission described in section 6103(d); and

(3) The term *Department of Justice* includes offices of the United States Attorneys.

(g) *Effective date.* This section is applicable on or after the date final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–636 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000 and 4010

RIN 1212–AB01

Electronic filing—Annual Financial and Actuarial Information; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects inadvertent errors in two instructions in the regulatory text of a proposed rule published in the **Federal Register** on December 28, 2004 (69 FR 77679), regarding electronic filing of financial and actuarial information.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

Correction

In proposed rule FR doc 04–28398, beginning on page 77679 in the issue of December 28, 2004, make the following corrections to the regulatory text:

1. On page 77682, column 3, in the first line of instruction 4, correct ''§ 4000.24'' to read ''4000.23'' and, in the 8th line of instruction 4, correct ''§ 4000.24 *What if I mail my submission or issuance using the U.S. Postal Service?*'' to read ''§ 4000.23 *When is my submission or issuance treated as filed or issued?*''.

2. On Page 77683, column 1, in the first line, correct paragraph (b)(3) of § 4000.23 to read as follows:

(b) * * *

(3) * * * A submission made through our Web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

* * * * *

3. On page 77684, column 3, in the 13th line of instruction 13, correct paragraph (b)(2) of § 4010.9 to read as follows:

* * * * *

(b) * * *

(2) For each controlled group member included in the consolidated financial statements (other than an exempt entity), the member's revenues and operating income for the information year, and net assets at the end of the information year.

* * * * *

Issued in Washington, DC, this 7th day of January, 2005.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 05–635 Filed 1–11–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 92

Assessment of Civil Penalties for Misuse of Words, Letters, Symbols, and Emblems of the United States Mint

AGENCY: United States Mint, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would establish procedures under which the United States Mint will implement and execute the provisions of 31 U.S.C. 333(c), which authorizes the Secretary of the Treasury to assess a civil penalty against any person who has misused the words, titles, abbreviations, initials, symbols, emblems, seals, or badges of the United States Mint.

DATES: Submit comments on or before February 18, 2005.

ADDRESSES: Send written comments to Daniel P. Shaver, Chief Counsel, Office of Chief Counsel, United States Mint, 801 9th Street, NW., Washington DC 20220; or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James L. Adler, Senior Attorney, United States Mint at (202) 354–7286, not a toll-free call.

SUPPLEMENTARY INFORMATION: Section 333(c) of title 31, United States Code, authorizes the Secretary of the Treasury to assess a civil penalty against any person who has misused the words, titles, abbreviations, initials, symbols, emblems, seals, or badges of the Department of the Treasury, including the United States Mint. The Secretary of the Treasury has delegated to the Director of the United States Mint the authority to enforce the civil penalty provisions of 31 U.S.C. 333(c) with respect to the misuse of United States Mint words, titles, abbreviations, initials, symbols, seals, trademarks, and badges, and with respect to the misuse of Department of the Treasury words, titles, abbreviations, initials, symbols, seals, trademarks, and badges when in connection with activities related to United States Mint operations and programs. The proposed rule establishes procedures to ensure that persons assessed with a civil penalty under 31 U.S.C. 333(c) are accorded due process. These procedures are based on the procedures of the Department of the Treasury at 31 CFR part 27.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant impact on small entities. This regulation provides due process protections for those persons assessed a civil penalty for misusing United States Mint names, symbols, titles, abbreviations, trademarks or badges. Any imposition of a civil penalty on a small business entity flows directly from the authorizing statute, 31 U.S.C. 333.

Public Participation

The United States Mint requests comments from all interested persons. Comments received prior to the closing date will be carefully considered. Comments received after the closing date will be considered to the extent possible, but no assurance can be given that they will be given consideration. No information contained in comments received will be considered confidential even if the comment, or a portion thereof, is marked confidential. Comments will be available to the public without restriction. The name of the person or entity making a comment is not exempt from disclosure.

Drafting Information

The principal author of this document is James L. Adler, Senior Attorney, Office of Chief Counsel, United States Mint. The principal author of the proposed regulation contained herein is Daniel P. Shaver, Chief Counsel, Office of Chief Counsel, United States Mint. However, other personnel in the Treasury Department, Departmental Offices, and in the United States Mint's Office of Chief Counsel have participated in its development.

List of Subjects in 31 CFR Part 92

Administrative practice and procedure, Advertising, Consumer protection, Currency, Penalties, Seals and insignia, Signs and symbols, Trademarks.

Authority and Issuance

For the reasons set forth in the preamble, the United States Mint proposes to amend 31 CFR part 92 as follows:

PART 92—UNITED STATES MINT OPERATIONS AND PROCEDURES

1. The authority citation for part 92 is revised to read as follows:

Authority: 5 U.S.C. 301, 321, 333.

2. The heading for part 92 is revised to read as set forth above.

3. Add a subpart heading before § 92.1 to read as follows:

Subpart A—Numismatic Operations

4. Add a subpart heading before § 92.5 to read as follows:

Subpart B—Availability of Records

5. Add a new Subpart C (§§ 92.11 through 92.18) to read as follows:

Subpart C—Assessment of Civil Penalities for Misuse of Words, Letters, Symbols, or Emblems of the United States Mint

Sec.
92.11 Purpose.
92.12 Definitions.
92.13 Assessment of civil penalties.
92.14 Initiation of action.
92.15 Initial notice of assessment.
92.16 Written response.
92.17 Final action.
92.18 Judicial review.

Subpart C—Assessment of Civil Penalities for Misuse of Words, Letters, Symbols, or Emblems of the United States Mint

§ 92.11 Purpose.

(a) The procedures in this subpart implement the provisions of 31 U.S.C. 333(c), which authorize the Secretary of the Treasury to assess a civil penalty against any person who has misused the words, titles, abbreviations, initials, symbols, emblems, seals, or badges of the United States Mint in violation of 31 U.S.C. 333(a).

(b) The procedures in this subpart do not apply to the extent that the Secretary of the Treasury, the Director of the United States Mint, or their authorized designees have specifically granted to the person express permission, in writing, to manufacture, produce, sell, possess, or use the words, titles, letters, abbreviations, initials, symbols, emblems, seals, or badges in a contract, agreement, license, letter, memorandum, or similar document.

§ 92.12 Definitions.

(a) *Assessing official* means the Director of the United States Mint, including the Acting Director when so designated.

(b) *Examining official* means an employee of the United States Mint appointed by the Director of the United States Mint (or an employee of the Treasury Department appointed by the Director of the United States Mint with the concurrence of head of that employee's organization), to administer the procedures in this subpart in a particular case and to propose findings and recommendations in that case to the assessing official. The examining official must be:

(1) Either an attorney assigned to the Legal Division, Department of the Treasury, or an employee of the

Treasury Department in the grade of GS–15 or higher; and

(2) Capable of examining the matter without actual or apparent conflict of interest.

(c) *Broadcast* or *telecast* means widespread dissemination by electronic transmission or method, whether audio and/or visual.

(d) *Civil penalty* means:

(1) A civil monetary penalty; and

(2) Any other civil or equitable remedy deemed necessary to rectify the potential for a continued misuse or harm from an activity found to have been in violation of 31 U.S.C. 333.

(e) *Date of offense* means the later of:

(1) The date that the misuse occurred;

(2) The date that the misuse had the effect of conveying the false impression that the activity was associated with or approved, endorsed, sponsored or authorized by the United States Mint or its officers or employees; or

(3) If the violation is a continuing one, the date on which the misuse of the words, titles, abbreviations, initials, symbols, emblems, seals, or badges protected by 31 U.S.C. 333 or the procedures in this subpart last occurred.

(f) *Days* means calendar days, unless otherwise stated.

(g) *Person* means an individual, partnership, association, corporation, company, business, firm, manufacturer, or any other organization, enterprise, or institution.

(h) *Respondent* means:

(1) The individual named in an Initial Notice of Assessment; or

(2) The head of the partnership, association, corporation, company, business, firm, manufacturer, or any other organization, enterprise, or institution named in the Initial Notice of Assessment.

(i) *Symbol* means any letter, word, number, picture, design, graphic or any combination thereof used by the United States Mint or the Treasury Department as a trademark, designation of origin, or mark of identification.

§ 92.13 Assessment of civil penalties.

(a) *General rule.* The assessing official may impose a civil penalty on any person when the following two conditions are met:

(1) That person uses in connection with, or as a part of, any advertisement, solicitation, business activity, or product, whether alone or with other words, letters, symbols, or emblems—

(i) The words ''Department of the Treasury,'' ''United States Mint,'' or ''U.S. Mint'';

(ii) The titles ''Secretary of the Treasury,'' ''Treasurer of the United States,'' ''Director of the United States Mint,'' or ''Director of the U.S. Mint'';

(iii) The abbreviations or initials of any entity or title referred to in paragraph (a)(1)(i) or (a)(1)(ii) of this section;

(iv) Any symbol, emblem, seal, or badge of an entity referred to in paragraph (a)(1)(i) of this section (including the design of any envelope, stationery, or identification card used by such an entity); or

(v) Any colorable imitation of any such words, titles, abbreviations, initials, symbols, emblems, letters, seals, or badges; and

(2) That person's use is in a manner that could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, authorized by, or associated with the United States Mint, or any officer, or employee thereof.

(b) *Disclaimers.* Any determination of whether a person has violated the provisions of paragraph (a) of this section shall be made without regard to any use of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(c) *Civil penalty.* The assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed $5,000 for each and every use of any material in violation of paragraph (a) of this section, except that such penalty shall not exceed $25,000 for each and every use if such use is in a broadcast or telecast.

(d) *Time limitations.* (1) Civil penalties imposed under the procedures in this subpart must be assessed before the end of the three-year period beginning on the date of the cited violation.

(2) The assessing official may commence a civil action to recover or enforce any civil penalty imposed in a Final Notice of Assessment issued pursuant to § 92.17 at any time before the end of the two-year period beginning on the date of the Final Notice of Assessment. If judicial review of the Final Notice of Assessment is sought, the two-year period begins to run from the date that a final and unappealable court order is issued.

(e) *Criminal Proceeding.* No civil penalty may be imposed under the procedures in this subpart with respect to any violation of paragraph (a) of this section after a criminal proceeding on the same violation has been commenced by indictment or information under 31 U.S.C. 333(d).

§ 92.14 Initiation of action.

(a) When an employee of the United States Mint learns of or discovers a potential violation of 31 U.S.C. 333 or the procedures in this subpart, he or she will refer the matter, with all available evidence, to the assessing official.

(b) The assessing official will consider relevant factors when determining whether to initiate an action to impose a civil penalty under the procedures in this subpart. Those factors may include, but are not limited to, the following:

(1) The scope of the misuse;

(2) The purpose and/or nature of the misuse;

(3) The extent of the harm caused by the misuse;

(4) The circumstances of the misuse; and

(5) The benefit intended to be derived from the misuse.

(c) If the assessing official decides to initiate an action to impose a civil penalty under the procedures in this subpart, he or she will, in writing:

(1) Appoint an examining official; and

(2) Delegate to the examining official the authority to prepare, sign, and serve an initial notice of assessment on behalf of the assessing official.

§ 92.15 Initial notice of assessment.

The examining official shall prepare and serve an Initial Notice of Assessment by United States mail or other means upon any person believed to be in violation of § 92.13 and otherwise subject to a civil penalty. The notice shall provide the name and telephone number of the examining official, who can provide information concerning the notice and the procedures in this subpart. The notice shall include the following:

(a) A specific reference to the provisions of § 92.13 violated;

(b) A concise statement of the facts that support the conclusion that such a violation occurred;

(c) The maximum amount of the potential penalty that the assessing official could impose, and/or any other proposed civil or equitable remedy;

(d) A notice informing the person alleged to be in violation of § 92.13 that he or she:

(1) May, within 30 days of the date of the notice, agree to pay the civil monetary penalty and consent to each proposed civil or equitable remedy, thereby waiving the right to make a written response under § 92.16 and to seek judicial review under § 92.18:

(i) By electronic funds transfer (EFT) in accordance with instructions to be provided by the examining official; or

(ii) By means other than EFT only with the written approval of the assessing official;

(2) May make a written response in accordance with § 92.16 within 30 days of the date of the notice asserting, as appropriate:

(i) Why a civil monetary penalty and/or other civil or equitable remedy should not be imposed;

(ii) Why a civil monetary penalty should be in a lesser amount than proposed; and

(iii) Why the terms of a proposed civil or equitable remedy should be modified;

(3) May be represented by an attorney or other representative, provided that a designation of representative signed by the person alleged to be in violation is received by the assessing official; and

(4) May request, within 20 days of the date of the notice, a copy of or opportunity to review any documents and other evidence that the United States Mint compiled and relied on in determining to issue the notice (the assessing official reserves the right to assert privileges available under law and may decline to disclose certain documents or other evidence protected by such privileges); and

(e) An advisement of the following:

(1) If no written response is received within the time allowed in § 92.16(b), a Final Notice of Assessment may be issued without a presentation by the person;

(2) If a written response has been made and it is deemed necessary, the examining official may request, orally or in writing, additional information from the respondent;

(3) A Final Notice of Assessment may be issued in accordance with § 92.17 requiring that the civil monetary penalty be paid and compliance with the terms of any other civil or equitable remedy;

(4) A Final Notice of Assessment is subject to judicial review in accordance with 5 U.S.C. 701 *et seq.*; and

(5) All submissions sent in response to the Initial Notice of Assessment must be transmitted to the address specified in the notice and include the name, address, and telephone number of the respondent.

§ 92.16 Written response.

(a) *Form and contents.* (1) The written response submitted by a person in accordance with § 92.15(d)(2) must provide the following:

(i) A reference to and specifically identify the Initial Notice of Assessment involved;

(ii) The full name of the person against which the Initial Notice of Assessment has been made;

(iii) If not a natural person, the name and title of the head of the organization named in the Initial Notice of Assessment; and

(iv) If a representative of the person named in the Initial Notice of Assessment is filing the written response, a copy of the duly executed designation as representative.

(2) The written response must admit or deny each violation of § 92.13 alleged in the Initial Notice of Assessment. Any alleged violation not specifically denied will be presumed to be admitted. Where an allegation is denied, the respondent shall specifically set forth the legal or factual basis upon which the allegation is denied. If the basis of the written response is that the respondent is not the person responsible for an allegation, the written response must set forth sufficient information to allow the agency to determine the truth of such an assertion. The written response should include any and all documents and other information that the respondent believes should be a part of the administrative record on the matter.

(b) *Time.* (1) Except as provided in paragraph (b)(2) of this section, any written response made under this section must be received not later than 30 days after the date of the Initial Notice of Assessment.

(2) If a request for documents or other evidence is made pursuant to § 92.15(d)(4), the written response must be received not later than 20 days after the date of the United States Mint's response to the request.

(3)(i) In computing the number of days allowed for filing a written response under this paragraph, the first day counted is the day after the date of the Initial Notice of Assessment. If the last date on which the response is required to be filed by this paragraph is a Saturday, Sunday or Federal holiday, the response will be due on the next business day after that date.

(ii) If a response is transmitted by United States mail, it will be deemed timely filed if postmarked on or before the due date.

(4) The examining official may extend the period for making a written response under paragraphs (b)(1) and (b)(2) of this section for up to ten days for good cause shown. Requests for extension beyond ten days must be approved by the assessing official and must be based on good cause shown. Generally, failure to obtain representation in a timely manner will not be considered good cause.

(c) *Filing.* The response may be sent by personal delivery, United States mail or commercial delivery. A written response transmitted by means other than United States mail will be considered filed on the date received at the address specified in the Initial Notice of Assessment. At the discretion of the assessing official, filing may be accomplished by facsimile or any other method deemed appropriate.

(d) *Review and Recommendation.* The examining official will fully consider the evidence and arguments submitted by the respondent in the written response, any other documents filed by the respondent pursuant to this subpart, and the evidence in the United States Mint's record on the matter. If the respondent waives the right to submit matters in accordance with § 92.15(d)(1), or declines to submit matters by the end of the 30-day response period, the examining official will fully consider the evidence in the United States Mint's record on the matter.

(1) In fully considering the matter, the examining official will not consider any additional evidence introduced in the record by the United States Mint after the Initial Notice of Assessment unless and until the respondent has been notified that such additional evidence will be considered, and has had an opportunity to review and comment on such evidence.

(2) The examining official will prepare a concise report, addressed to the assessing official, which will contain the following:

(i) The entire administrative record on the matter, including all information provided in or with a written response timely filed by the respondent and any additional information provided pursuant to § 92.15(e)(2), as well as all evidence upon which the Initial Notice of Assessment was based, and any additional evidence as provided for in § 92.16(d)(1).

(ii) A finding, based on the preponderance of the evidence, as to each alleged violation specified in the Initial Notice of Assessment;

(iii) For each violation that the examining official determines to have occurred, a recommendation as to the appropriate amount of a civil monetary penalty to be imposed and the terms of any other appropriate civil or equitable remedy. In making this recommendation, the examining official will consider relevant factors including, but not limited to, the following:

(A) The scope of the misuse;

(B) The purpose and/or nature of the misuse;

(C) The extent of the harm caused by the misuse;

(D) The circumstances of the misuse; and

(E) The benefit intended to be derived from the misuse.

(iv) If the examining official determines that a violation has occurred, a proposed Final Notice of

Assessment that incorporates his or her findings and recommendations.

(v) Any additional information or considerations that the assessing officer should consider in a decision to issue a Final Notice of Assessment under § 92.17.

(3) The examining official will submit his or her report to the Deputy Chief Counsel, United States Mint, for legal review. If the Deputy Chief Counsel is not available to perform this legal review, the Chief Counsel, United States Mint, shall designate a qualified attorney on the United States Mint staff (or, with the appropriate approval, an attorney assigned to the Treasury Department Legal Division) to perform this review. The Deputy Chief Counsel or designee will determine:

(i) Whether the proceedings comply with legal requirements;

(ii) What effects any errors would have;

(iii) Whether sufficient evidence supports the examining official's findings; and

(iv) Whether the examining official's recommendations are consistent with his or her findings.

(4) Upon completion of legal review:

(i) If the Deputy Chief Counsel or designee determines that there is no deficiency, he or she will forward the report to the Chief Counsel, United States Mint.

(ii) If the Deputy Chief Counsel or designee determines that a deficiency exists, he or she will return the report to the examining official with instructions on the corrective action that the examining official must take to remedy each deficiency. After the examining official has taken corrective action, he or she will resubmit the report to the Deputy Chief Counsel or designee in accordance with § 92.16(d)(3).

(5) Upon receipt of a final report under § 92.16(d)(4)(i), the Chief Counsel will review the record and forward the report, and his or her recommendations as to final action, to the assessing official.

§ 92.17 Final action.

(a) In making a final determination whether to impose a penalty, the assessing official shall take into consideration the entire report prepared by the examining official and the recommendations of the Chief Counsel, United States Mint. While the assessing official should accord appropriate weight to the findings and recommendations of the examining official, and the recommendations of the Chief Counsel, the assessing official is not bound by them. The assessing official may approve, disapprove, modify, or substitute any or all of the examining official's findings and recommendations if, in his or her judgment, the evidence in the record supports such a decision. The assessing official will determine whether:

(1) The facts warrant a conclusion that no violation has occurred; or

(2)(i) The facts warrant a conclusion that one or more violations have occurred; and

(ii) The facts and violations found justify the conclusion that a civil penalty should be imposed.

(b) If the assessing official determines that no violation has occurred, the official shall promptly send a letter indicating that determination to the person served with an Initial Notice of Assessment and to any designated representative of such person.

(c) If the assessing official determines that a violation has occurred:

(1) The assessing official shall issue a Final Notice of Assessment to the person served with an Initial Notice of Assessment and to any designated representative of such person.

(2) The assessing official may, in his or her discretion:

(i) Impose a civil monetary penalty and/or any civil or equitable remedy deemed necessary to rectify the potential for a continued misuse or harm from the violation(s);

(ii) Not impose a civil monetary penalty and/or civil or equitable remedy; or

(iii) Impose a civil monetary penalty and/or civil or equitable remedy and condition payment of the civil monetary penalty on the violator's future compliance with 31 U.S.C. 333, and with any civil or equitable remedy contained in the Final Notice of Assessment.

(3) If a civil monetary penalty is imposed under § 92.17(c)(2)(i) or (iii), the assessing official shall determine the appropriate amount of the penalty in accordance with 31 U.S.C. 333(c)(2). In determining the amount of a civil penalty, the assessing official will consider relevant factors including, but not limited to, the following:

(i) The scope of the misuse;

(ii) The purpose and/or nature of the misuse;

(iii) The extent of the harm caused by the misuse;

(iv) The circumstances of the misuse; and

(v) The benefit intended to be derived from the misuse.

(4) The Final Notice of Assessment shall:

(i) Include the following:

(A) A specific reference to each provision of § 92.13 found to have been violated;

(B) A concise statement of the facts warranting a conclusion that each violation has occurred;

(C) An analysis of how the facts and each violation justifies the conclusion that a civil monetary penalty and/or civil or equitable remedy should be imposed; and

(D) The amount of each civil monetary penalty imposed, a statement as to how the amount of each penalty was determined, and the terms of any civil or equitable remedy deemed necessary to rectify the potential for a continued misuse or harm from each violation; and

(ii) Inform the person of the following:

(A) Payment of a civil monetary penalty imposed by the Final Notice of Assessment must be made within 30 days of the date of the notice, and that any civil or equitable remedy imposed must be complied with as provided in the Final Notice of Assessment;

(B) Payment of a civil monetary penalty imposed by the Final Notice of Assessment shall be by EFT in accordance with instructions provided in the notice, unless the assessing official has given written approval to have payment made by other means;

(C) Payment of a civil monetary penalty imposed by the Final Notice of Assessment constitutes consent by the person to comply with the terms of any civil or equitable remedy contained in the notice;

(D) If payment of a civil monetary penalty imposed by the Final Notice of Assessment has been waived on the condition that the person comply with the terms of any civil or equitable remedy contained in the notice or comply in the future with 31 U.S.C. 333 and the procedures in this subpart, the failure by the person to so comply will make the civil monetary penalty payable on demand;

(E) If a civil monetary penalty is not paid within 30 days of the date of the Final Notice of Assessment (or on demand under paragraph (c)(3)(ii)(D) of this section), or if a civil or equitable remedy is not complied with in accordance with the terms of the notice, a civil action to collect the penalty or enforce compliance may be commenced at any time within two years of the date of the Final Notice of Assessment; and

(F) Any civil monetary penalty and civil or equitable remedy imposed by the Final Notice of Assessment may be subject to judicial review in accordance with 5 U.S.C. 701 *et seq.*

§ 92.18 Judicial review.

A final Notice of Assessment issued under the procedures in this subpart may be subject to judicial review pursuant to 5 U.S.C. 701 *et seq.*

Dated: January 6, 2005.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 05–543 Filed 1–11–05; 8:45 am]

BILLING CODE 4810–37–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME No. R03–OAR–2004–DC–0009; FRL–7861–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 and Post 1999 Rate-of-Progress Plans, Contingency Measures, Transportation Control Measures, VMT Offset, and 1990 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area (the Washington area). These revisions include the post 1996–1999 and post 1999–2005 rate-of-progress (ROP) plans, changes to the 1990 base year inventory, a contingency measures plan, certain transportation control measures (TCMs), and a demonstration that each SIP contains sufficient transportation control measures to offset growth in vehicle miles traveled (VMT) as necessary to demonstrate ROP and attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to propose approval of revisions submitted to satisfy the SIP requirements of 1-hour ozone nonattainment areas classified as severe. These revisions are being proposed for approval in accordance with the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before February 11, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0009 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0009, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0009. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230, Baltimore, Maryland 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA. The use of ''States'' in this document refers to the State of Maryland, the Commonwealth of Virginia and the District of Columbia.

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I. The Action EPA Is Proposing Today

The EPA is proposing approval of the post 1996–1999 ROP plans, the post 1999–2005 ROP plans and the contingency measure plans for both ROP and attainment submitted by the District of Columbia, Maryland and Virginia (''the States'') for the Washington area. In addition, EPA is also proposing approval of the States' revisions to the 1990 base year emissions inventory, TCMs, and a demonstration that the SIP for each State contains sufficient TCMs to offset growth in VMT as necessary to achieve ROP and to attain the ozone NAAQS (commonly referred to as the VMT Offset SIP). Tables 1 and 2 identify the initial submittal dates and the dates on which the States' submitted amendments for these plans and measures:

TABLE 1.—POST 1996–1999 ROP PLANS FROM THE STATES

	DC	MD [1]	VA
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amended submittal dates	May 25, 1999	May 20, 1999	May 25, 1999.

[1] Maryland SIP revision submittals labeled as 97–04 and 99–12.

The post 1996–1999 ROP Plan SIP revisions also include certain TCMs, specifically those TCMs identified in Appendix H of the States' submittals.

TABLE 2.—1999–2005 ROP PLANS, CONTINGENCY MEASURES PLAN, AMENDMENTS TO THE 1990 BASE YEAR INVENTORY, AND VMT OFFSET PLANS

	DC	MD [2]	VA
Initial submittal dates	September 5, 2003	September 2, 2003	August 19, 2003.
Amended submittal dates	February 25, 2004	February 24, 2004	February 25, 2004.

[2] Maryland SIP revision submittals labeled as 03–05 and 04–01.

Hereafter, the SIP revisions listed in Table 2 of this document will be called the ''2004 SIP revisions.'' The States' 2004 SIP revisions include the post 1999–2005 ROP plans, the VMT Offset SIPs, revisions to the 1990 base year emissions inventory, and the contingency measures plans for ROP and attainment for the Washington area. The 2004 SIP revisions also include certain TCMs, namely those TCMs identified in Appendix J of the SIP revision submittals. The 2004 SIP revisions also include the States' attainment demonstration plans for the Washington area. Those attainment demonstration plans are the subject of a separate rulemaking action.

II. Background

A. What Is the Washington DC 1–Hour Ozone Nonattainment Area?

The Washington area is comprised of the entire District of Columbia (the District), a portion of Maryland (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), and a portion of Virginia (Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

B. What Previous Action Has EPA Taken on the Post 1996–1999 ROP Plans?

On January 3, 2001 (66 FR 586), the EPA approved the States' post 1996–1999 ROP plans, attainment demonstration plans (those submitted during 1998 and 2000) and an attainment date extension for the Washington area. A petition for review of that final rule was filed. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the court) ruled on the petition and vacated our January 3, 2001 approval of the States' attainment demonstrations, their 1996–1999 ROP plans and the attainment date extension. (*See Sierra Club* v. *Whitman,* 294 F.3d 155, 163 (D.C. Cir. 2002) (''*Sierra Club I*''). Among other things, the court said that the EPA was without authority to extend the Washington area's attainment deadline unless it also ordered the area to be reclassified as a ''severe'' area. The court also found that the attainment demonstration and ROP plans were deficient because neither contained approved contingency measures as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act (CAA or the Act). *Id.* at 164. Furthermore, the court determined that in addition to a 9 percent reduction in baseline emissions from 1996 to 1999, an area with an attainment date in 2005 must have an approved ROP plan that demonstrates ROP to 2005. *Id.* at 163. The Washington area's post 1996–1999 ROP plan, that had been submitted by each of the States, demonstrated ROP only through 1999.

On January 24, 2003 (68 FR 3410), EPA published a final rule determining that the Washington area failed to attain the November 15, 1999 ozone attainment deadline for serious areas and reclassifying the Washington area from serious to severe ozone nonattainment. That final rule also specified the additional SIP elements mandated by the CAA for that severe area, that would have to be adopted and submitted as SIP revisions by the States for the Washington area as a result of its reclassification to severe.

On April 17, 2003 (68 FR 19106), EPA conditionally approved the States' post 1996–1999 ROP plans and those versions of the attainment demonstration plans submitted during 1998 and 2000, contingent upon the States fulfilling commitments they made to submit the additional elements required of SIPs for a severe area within one year. The Sierra Club filed a petition for review of that final rule alleging, among other things, that EPA could not lawfully conditionally approve these SIP revisions due to a lack of specificity in the States' commitment letters, and that EPA should require the post 1996–1999 ROP plans be revised to use the latest mobile sources emission factor model.

On February 3, 2004, the court ruled on that petition and issued its opinion vacating our April 17, 2003 rule. The court granted the petition solely on the issue that use of a conditional approval was not appropriate nor available to EPA on these SIPs. The court denied the petition for review in all other respects. (*See Sierra Club* v. *EPA,* 356 F.3d at 301–04 (D.C. Cir. 2004) (''*Sierra Club II*'').[3] On April 23, 2004, the court issued its mandate, thereby relinquishing jurisdiction over the post 1996–1999 ROP plans and the attainment demonstration SIP revisions and remanding them back to EPA.

C. What Is the Purpose of the Action EPA Is Taking Today?

Given that the States have now adopted and submitted contingency measures plans and ROP plans through to the 2005 attainment year, EPA is proposing to approve the post 1996–1999 ROP plans that applied to the Washington area pursuant to the area's initial classification as a serious ozone nonattainment area. In addition, EPA is proposing approval of the States' revisions to the 1990 base year emissions inventory. EPA is also proposing to approve the 2004 SIP revisions listed in Table 2 of this document, namely the post 1999–2005 ROP plans, contingency measures plans, and VMT offset plans that apply to the Washington area as a result of its reclassification to severe 1-hour ozone nonattainment. The contingency measure plans identify those measures that were implemented as a consequence of the failure of the Washington area to meet its original November 15, 1999 serious area attainment date, and also identify those adopted measures that will be implemented should the now reclassified Washington area fail to attain the1-hour ozone NAAQS by the severe area deadline date of November 15, 2005 or if the area fails to make reasonable further progress (RFP) or meet a ROP milestone. In addition, EPA is proposing to approve certain TCMs which were made part of the States' post 1996–1999 ROP plans as well as part of the 2004 SIP revisions. These SIP revisions and our rationale for proposing to approve them are discussed in more detail in the subsequent sections of this document.

III. Amendments to the 1990 Base Year Emissions Inventory

EPA mandated the use of the MOBILE6 model for the post-1999 ROP plan development and also required associated revisions to the 1990 base year inventory. (*See* 68 FR at 3418, January 24, 2003; and the joint memorandum issued by EPA's Office of Air Quality Planning & Standards and Office of Transportation & Air Quality, January 18, 2002)[4] As we explained in our January 24, 2003 final rule, requiring the use of MOBILE6 to calculate the 2002 and 2005 ROP target levels will ''necessitate a revision to the 1990 base year inventory which is, among other things, the planning base line from which the 2002 and 2005 ROP targets are calculated.'' In their 2004 SIP revisions, the States updated the 1990 base year inventory to reflect the use of MOBILE6. This affected the base year on-road mobile source inventory as well as the emissions resulting from vehicle refueling and the benefits of stage II vapor recovery and of reformulated gasoline (RFG). The States also made other changes as a result of new inventory methods and information.

The States added several new sources to the point source inventory, that is, large stationary sources of VOC and nitrogen oxides (NO_X) emissions, as result of the area's January 24, 2003 reclassification to severe ozone nonattainment. This reclassification lowered the threshold of what is considered a major stationary source to 25 tons per year (TPY) from 50 TPY. This resulted in additional sources being added to the point source inventory for NO_X emissions. The threshold for inclusion in the point source inventory for VOC emissions had already been 10 TPY of VOC emissions and remains at this level.

The States also updated the area and nonroad portion of the inventory for aircraft emissions and ground support equipment at commercial airports using the Emissions Dispersion Modeling System (EDMS) to recompute the 1990 base year emissions. The Federal Aviation Administration requires EDMS as the methodology for performing air quality emissions and air quality analyses modeling for aviation sources. It further requires airport sponsors to use the most recent EDMS model to calculate all emissions at airports to satisfy the National Environmental Policy Act (NEPA), the CAA's general conformity requirements, and other statutorily mandated analyses. EPA has endorsed the use of EDMS.

The prior methodology used by the States for the 1990 inventory, as compared to EDMS, resulted in higher base year NO_X emissions and provided for higher allowable levels of NO_X emissions for these source categories. Therefore, the prior methodology would have set a higher NO_X emissions budget against which general conformity would be determined in future years' analyses. However, as previously noted, EDMS is the required methodology for performing the future years' general conformity analyses, themselves. The States' revisions to update and recompute the SIPs' 1990 base year area and nonroad inventory for aircraft emissions and ground support equipment at commercial airports using EDMS provide for consistency between the methodologies used to establish the SIPs' allowable NO_X growth budget and for performing future year's general conformity analyses. The States have also based the 2002 and 2005 year area aircraft emissions and ground support equipment at commercial airports portions of the area and nonroad portion of the inventory upon EDMS projections. EPA is proposing to approve the changes to the 1990 base year inventories.

IV. Post 1996–1999 and Post 1999–2005 ROP Plans

A. What Agencies and Organizations Developed the Post 1996–1999 and Post 1999–2005 ROP Plans for the Washington Area?

The District, Virginia and Maryland must demonstrate reasonable further progress (RFP) for the Washington area. These jurisdictions, under the auspices of the Metropolitan Washington Air Quality Committee (MWAQC), with the assistance of the Metropolitan

[3] On April 16, 2004, the court issued an order revising the February 3, 2004 opinion to address a petition for rehearing and leaving its decision to vacate and remand the conditional approval to EPA intact. *Sierra Club* v. *EPA,* 356 F.3d 296, 301–304 (D.C. Cir.) 2004), *amended by* No. 03–1084, 2004 WL 877850 (D.C. Cir. Apr. 16, 2004).

[4] Joint Memorandum dated January 18, 2002, From John S. Seitz, Director, Office of Air Quality Planning & Standards, and Margo Tsirigotis Oge, Director of Office of Transportation and Air Quality, ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity''.

Washington Council of Governments (COG), collaborated on a coordinated post 1996–1999 ROP plan and later a coordinated post 1999–2005 ROP plan for the Washington area. The MWAQC includes state and local elected officials and representatives of the District's Department of Health (DoH), the Maryland Department of the Environment (MDE), the Virginia Department of Environmental Quality (VADEQ) and the National Capital Region Transportation Planning Board (TPB). The CAA provides for such interstate coordination for multi-state nonattainment areas. Because control strategy SIPs, such as the ROP plans, must establish and identify motor vehicle emissions budgets (MVEBs) for use in conformity determinations of transportation improvement plans, municipal planning organizations have historically been involved in air quality planning in the Washington area. The MWAQC ensures consultation with the TPB during the development of the Washington area ROP plans and their associated MVEBs. The post 1996–1999 ROP plan and the post 1999–2005 ROP plan each include the emission target levels that demonstrate ROP for the milestone year(s), the projections of growth and the total amount of creditable reductions required for the entire Washington area. The District, Maryland and Virginia agreed to apportion this total amount of required creditable reductions among themselves. Although both the ROP plans were developed on an area-wide basis, each State met the CAA requirements by submitting the post 1996–1999 ROP plan and the post 1999–2005 ROP plan to the EPA as revisions to its SIP.

B. What ROP Requirements Are Applicable to the Washington Area After 1996?

The CAA requires that serious and above ozone nonattainment areas develop plans to reduce area-wide VOC base line emissions after 1996 by 3 percent per year (averaged over consecutive 3-year periods) until the year of the attainment date required for that classification of nonattainment area. The Washington area was initially classified as a serious ozone nonattainment area with an attainment date of November 15, 1999. As such, the Washington area States had and continue to have a requirement that a post 1996–1999 ROP plan be SIP-approved which demonstrates a 9 percent reduction in baseline emissions by 1999.

As previously noted, EPA published a final rule reclassifying the Washington area to severe ozone nonattainment on January 24, 2003, effective March 25, 2003. The statutory attainment date for severe areas is November 15, 2005. The final rule reclassifying the Washington area to severe ozone nonattainment imposed additional requirements on the Washington area including, among other things, a post 1999–2005 ROP plan to achieve an additional 9 percent reduction in base line emissions between 1999 and 2002, and, a further 9 percent reduction between 2002 and 2005. This 9 percent reduction requirement is a continuation of the ROP requirement for a 15 percent reduction in VOC post 1990–1996. For post 1996 and post 1999 ROP plans, the Act allows the substitution of NO_X emissions reductions for VOC emission reductions where equivalent air quality benefits are achieved as determined using the applicable EPA guidance.

C. What Are the Basic Components of a ROP Plan?

1. *An Overview*—A ROP plan consists of a plan to achieve a target level of emissions by each of the milestone years covered by the plan. There are several important emission inventories and calculations associated with the plan including the base year emissions inventory, future year projection inventories, and target level calculations. After accounting for growth in emissions after 1990, the plan must also demonstrate that future year emissions with be held to levels by the creditable control programs' emissions reductions to an amount that is less than or equal to the applicable target level. One method for demonstrating this is to determine how many emission reductions are required by subtracting the target level from the future year uncontrolled emissions.

2. *How is the Target Level Determined?*—EPA has issued guidance on how to calculate the target levels. This guidance outlines a process for calculating a target level. In summary, the State first calculates the 1996 VOC target level that corresponds to the 15 percent reduction in VOC baseline emissions (the 15 percent plan) required under section 182(b)(1) of the Act. The target level starts with the 1990 ROP VOC inventory of VOC. The 1996 VOC target level equals the 1990 ROP VOC inventory minus:

(a) The ''noncreditable reductions'' due to the Federal Motor Vehicle Control Program (FMVCP) promulgated by January 1, 1990, (''FMVCP Tier 0'') and Reid Vapor Pressure (RVP) regulations required under section 211(h) of the Act (Phase 2 RVP),

(b) Any noncreditable reasonably available control technology (RACT) rule correction reductions required by section 182(a)(2)(A) of the Act,[5] and,

(c) An amount equal to the required 15 percent reduction in baseline VOC emissions.

The required 15 percent reduction in baseline VOC emissions is not computed as 15 percent of the 1990 ROP VOC emissions inventory. Because section 182(b)(1)(C) defines ''base line emissions'' as the 1990 ROP inventory less those 1990 calendar year emissions that would be eliminated by the FMVCP Tier 0 and Phase 2 RVP programs by the milestone year, an ''adjusted'' 1990 base year inventory must be computed to reduce the 1990 ROP inventory by the amount of emissions that would be eliminated by implementation of the FMVCP Tier 0 and Phase 2 RVP programs. The required 15 percent reduction in baseline VOC emissions is, therefore, 15 percent of the ''adjusted'' 1990 base year inventory for 1996.

For subsequent milestone years, a similar process is used to compute the target level of emissions. For each three year period after 1996, the ''fleet turnover correction'' (FTC) (that amount of base line emission eliminated by FMVCP Tier 0 and Phase 2 RVP programs during that three year period) is computed and the ''adjusted'' 1990 base year inventory is computed (which is the ''adjusted'' 1990 base year inventory for the prior milestone year minus the relevant FTC). The target level for a milestone year is the target level for the prior milestone year minus the FTC for the three-year period minus the required ROP reductions.[6] In the absence of NO_X substitution, the required post-1996 ROP reduction is 9 percent of the adjusted 1990 VOC base year inventory for the milestone year in question. With NO_X substitution, the required post-1996 ROP VOC reductions can be an amount less than 9 percent as long as the percentage of NO_X substituted plus the VOC ROP percentage equals or exceeds 9 and as long as the amount of NO_X substituted

[5] Any reductions in 1990 baseline emissions due to the corrections in vehicle inspection and maintenance programs under section 182(a)(2)(B) are also treated excluded from counting towards the required 15 percent reduction (*see* CAA section 182(b)(1)(D)(iv)). There were no required corrections in vehicle inspection and maintenance programs in the Washington area and this provision will not be discussed further in this document.

[6] With the exception of 1999 when NO_X substitution is used. In that case, for the 1999 VOC target level, the starting point is the 1996 VOC target level from the 15 percent plan, but for the 1999 NO_X target level the 1990 ROP NO_X inventory is used in lieu of a 1996 target level because the 15 percent plan does not set a NO_X target level for 1996.

meets EPA's December 1993 NO_X Substitution Guidance. With NO_X substitution, a NO_X target is also calculated along the same lines as for a VOC target.

Table 3 summarizes the process for computing ROP target levels continued through the 2005 milestone year:

TABLE 3.—GENERAL PROCESS FOR COMPUTING ROP TARGET LEVELS

Row	Description	How computed
1	1990 ROP Inventory	1990 base year inventory less biogenic emissions and sources outside the nonattainment area.
2	Adjusted 1990 Base Year Inventory for 1996	1990 ROP inventory less emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP.
3	Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP Programs.	Row 1 minus Row 2 (*see Note 1*).
4	Reductions from RACT Rule Corrections	Amount 1990 base year emissions reduced by required RACT rule corrections (*see Note 1*).
5	Required 15 Percent Reduction	0.15 times Row 2.
6	1996 Target Level	Row 1 minus Rows 3, 4 and 5.
7	Adjusted 1990 Base Year Inventory for 1999	1990 ROP inventory less emissions eliminated through 1999 by Tier 0 FMVCP/Phase 2 RVP.
8	Fleet Turnover Correction (FTC) for 1999	Row 2 minus Row 7 (*see Note 2*).
9	Required ROP Reduction for 1999	ROP Percentage (0.0 to 0.09) times Row 7 (*see Note 3*).
10	1999 Target Level	Row 6 minus Rows 8 and 9 (*See Note 4*).
11	Adjusted 1990 Base Year Inventory for 2002	1990 ROP inventory less emissions eliminated through 2002 by Tier 0 FMVCP/Phase 2 RVP.
12	FTC for 2002	Row 7 minus Row 11.
13	Required ROP Reduction for 2002	ROP Percentage (0.0 to 0.09) times Row 11 (*see Note 2*).
14	2002 Target Level	Row 10 minus Rows 12 and 13.
15	Adjusted 1990 Base Year Inventory for 2005	1990 ROP inventory less emissions eliminated through 2005 by Tier 0 FMVCP/Phase 2 RVP.
16	FTC for 2005	Row 15 minus Row 11.
17	Required ROP Reduction for 2005	ROP Percentage (0.0 to 0.09) times Row 15 (*see Note 2*).
18	2005 Target Level	Row 14 minus Rows 16 and 17 (*see Note 3*).

Note 1. With NO_X substitution this need not be computed for any 1999 or later NO_X target levels. Also, because RACT was not required on sources of NO_X prior to 1990, there were no RACT rule corrections that might reduce 1990 base line NO_X emissions and thus this need not be computed for any 1999 or later NO_X target levels.

Note 2. Formula shown for 1999 applies to VOC. When using NO_X substitution the FTC for 1999 is Row 1 minus Row 7.

Note 3. For any three-year, post-1999 period, States are free to choose the amount of NO_X substituted as long as the percentage of VOC plus the percentage of NO_X reduction equals 9 percent (0.09), and, as long as the plan adheres to the other restraints on the amount of NO_X substituted found in EPA's December 1993 NO_X Substitution Guidance.

Note 4. When NO_X substitution is used, the 1999 target level starts with the 1990 ROP inventory, not a 1996 target level, and hence would be Row 1 minus Rows 8 and 9. Row 4 is not relevant when computing NO_X targets.

D. EPA's Evaluation of the Post 1996–1999 ROP Plans for the Washington Area

1. How Were the 3 Percent per Year Reduction Needs for the Post-1996–1999 ROP Plans Calculated?

A post 1996–1999 ROP plan consists of a plan to achieve a target level of emissions by November 15, 1999. As previously stated, there are emission inventories and calculations associated with the plan including the base year emission inventory, future year projection inventories, and target level calculations. The post 1996–1999 ROP plan also identifies the amount of creditable emission reductions that each state must achieve for the nonattainment area-wide plan to get a 9 percent reduction accounting for any growth in emissions from 1990 to 1999. The EPA addressed the sufficiency of the Washington area's post 1996–1999 ROP plan base year emission inventory, future year projection inventories, and target level calculations in its previous notices regarding the Washington area attainment demonstration. (*See* 65 FR 58243 September 28, 2000, 65 FR 62658, October 19, 2000, 68 FR 5246, February 3, 2004, and 68 FR 19106, April 17, 2004.)

Although EPA requires that states use the latest mobile source emissions factor model available at the time a plan is developed, our policy is not to require states that have already submitted SIPs or that submitted SIPs shortly after MOBILE6's release to revise these SIPs simply because the new motor vehicle emissions model becomes available. (*See* 68 FR at 19120, April 17, 2003 and Memorandum from EPA Office of Air Quality Planning & Standards, January 18, 2002.[7]) In the case of the Washington area's post 1996–1999 ROP plans, the States' SIP revisions were submitted in 1999 more than 3 years prior to the release of the MOBILE6 model.

[7] Joint Memorandum dated January 18, 2002, from John S. Seitz, Director, Office of Air Quality Planning & Standards, and Margo Tsirigotis Oge, Director of Office of Transportation and Air Quality, "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity".

As stated previously, EPA promulgated a final action on January 3, 2001 (66 FR 586) fully approving and a final action on April 17, 2003 (68 FR 19106) conditionally approving these 1996–1999 ROP plan SIP revisions which the court vacated. It is important to note that although the Sierra Club's petition for review of our April 17, 2003 final rule claimed, among other things, that the approval of the States' 1996–1999 ROP plans was arbitrary and capricious because those plans relied on an outdated emissions model and that EPA should require that the post 1996–1999 ROP plans be revised using MOBILE6, in its February 3, 2004 ruling on the petition, the court denied the petition for review on this claim. (*See Sierra Club II,* 356 F.3d 296, 307–308 (D.C. Cir. 2004). The court upheld EPA's decision not to require the Washington area States to revise their post 1996–1999 ROP plans to reflect MOBILE6. Therefore, EPA believes that the ROP target levels of the post 1996–1999 ROP plans are approvable.

2. What Control Strategies Are the District, Maryland and Virginia Including in the Post 1996–1999 ROP Plan?

The post 1996–1999 ROP plan describes the emission reduction credits that the Washington area jurisdictions are claiming toward their 9 percent reduction requirement. We can credit reductions for the ROP requirement for rules promulgated by EPA and for state measures we have approved as SIP revisions. The post 1996–1999 ROP plan control measures for the Washington area are listed in Tables 4 and 5 of this document and described in more detail in the Technical Support Document (TSD) for this rulemaking.

3. What Are the Total Reductions in the 1996–1999 ROP Plan?

Table 6 summarizes the VOC and NO_X creditable measures in Maryland's, Virginia's and the District's 1996–1999 ROP plan for the Washington area.

TABLE 4.—CREDITABLE VOC EMISSION REDUCTIONS IN THE POST 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Measure	DC	MD	VA
Tier 1 FMVCP	1.4	5.5	5.9
RFG Refueling Benefits	0.0	0.9	0.7
National low emission vehicle (NLEV)	0.2	0.6	1.3
Reformulated Gasoline (on/off road)	2.2	7.9	8.0
Surface Cleaning/Degreasing	0.0	2.9	0.0
Autobody Refinishing	0.5	3.8	2.7
AIM	1.6	6.6	5.6
Consumer Products	0.6	2.2	1.9
Seasonal Open Burning Ban	0.0	3.7	2.6
Graphic Arts	0.9	1.0	1.5
Landfill Regulations	0.0	0.0	0.3
Non-CTG RACT to 50 TPY	0.0	0.4	0.4
RACT on Additional Sources >25 TPY and <50 TPY	N/A	0.3	0.0
Stage II Vapor Recovery	0.0	8.9	7.9
Stage I Enhancement (excluding Loudoun County, VA)	0.0	0.9	0.3
Federal Non-road Gasoline Engine Standards	0.9	6.3	6.8
TCMs	0.0	0.1	0.1
Enhanced I/M	3.9	18.0	17.9
Total Creditable Reductions	11.8	70.0	63.9

TABLE 5.—CREDITABLE NO_X EMISSION REDUCTIONS IN THE POST 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Measure	DC	MD	VA
Enhanced I/M	2.4	14.8	16.9
Tier 1	2.5	13.7	14.7
NLEV	.2	0.3	1.5
Reformulated Gasoline (on-road)	0.0	0.1	0.1
Federal Non-road Gasoline Engine Standards	−0.1	−0.4	−0.5
Federal Non-road Diesel Engine Standards	0.4	3.7	3.2
State NO_X RACT/beyond NO_X RACT rules	2.1	67.9	12.0
Open Burning Ban	0	0.8	0.6
TCMs	0	0.2	0.2
Total Creditable Reductions	7.5	101.1	48.7

TABLE 6.—CREDITABLE EMISSION REDUCTIONS COMPARED TO THE EMISSIONS REDUCTIONS NEEDED FOR THE POST 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

	DC	MD	VA	Area-wide total
VOC Reductions in Plan	11.8	70.0	63.9	145.7
Area-wide Reduction Needs	.....	.....	.....	131.5
Surplus	.....	.....	.....	14.2
NO_X Reductions in Plan	7.5	101.1	48.7	157.3
Area-wide Reduction Needs	.....	.....	.....	150.6
Surplus	.....	.....	.....	6.7

E. EPA's Evaluation of the of the Post 1999–2005 ROP Plans for the Washington Area

1. What Effect Do the Amendments to the 1990 Base Year Have on the Post 1999–2005 ROP Plans

Unlike the post 1996–1999 ROP plan, EPA explicitly requires that the States develop the post 1999–2005 ROP plan using the updated MOBILE6 emission factor model because the requirement for such a plan came due for the Washington area after the release of MOBILE6. (*See* 68 FR 3410 at 3420, January 24, 2003.) The 1990 ROP and ''adjusted'' 1990 base year inventories, as discussed in section IV. C. this document, are significantly dependent upon the mobile source emission factor model. The mobile source emission factor model is the tool used to determine the amount of 1990 baseline emissions that would be eliminated by the pertinent milestone year due to the Tier 0 FMVCP and Phase 2 RVP programs, and, thus, is a fundamental aspect of the development of the FTC and ''adjusted'' 1990 base year inventories. In the guidance that we provided for the post 1999–2005 ROP plan under the reclassification of the Washington area to severe, we recognized that the 1990 ROP and adjusted 1990 base year inventories and the 1996 and 1999 target levels would have to be re-computed in order to determine the target levels for the post 1999 ROP requirements. We had identified that in addition to motor vehicle emissions budgets for the 2002 and 2005 milestone years, development of the required post 1999 ROP plan would also require the development of revisions to the 1990 base year emissions inventories and development of up to seven 1990 adjusted inventories (VOC for 1996, VOC and NO_X for 1999, VOC and NO_X for 2002, plus VOC and NO_X for 2005). *See* 67 FR 68805 at 68811, November 13, 2003.

As shown in Table 3 of this document, the 1999 target level is the 1996 target level minus a percentage of the adjusted 1990 Base Year Inventory for 1999 and the FTC for 1999; and the 1996 target level is the 1990 ROP Inventory minus the following three amounts:

(a) 15 percent of the ''adjusted'' 1990 base year inventory for 1996;

(b) Reductions from RACT rule corrections; and

(c) Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP programs.

Therefore, the 1999 target level is just the 1990 ROP inventory minus the following five amounts:

(1) 15 percent of the ''adjusted'' 1990 base year inventory for 1996;

(2) Reductions from RACT rule corrections;

(3) Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP programs;

(4) A percentage of the ''adjusted'' 1990 Base Year Inventory for 1999; and

(5) The FTC for 1999.

To continue this process for 2002 and 2005, the steps outlined in Table 3 of this document entitled, ''General Process for Computing ROP Target Levels'' are used for the 2002 and 2005 milestone targets as shown in Tables 7a and 7b.[8]

TABLE 7A.—GENERAL PROCESS FOR COMPUTING 2002 AND 2005 ROP VOC TARGET LEVELS

Row	Description	How computed
1	1990 VOC ROP Inventory	1990 base year inventory less biogenic emissions and sources outside the nonattainment area.
2	Adjusted 1990 Base Year VOC Inventory for 1996	1990 ROP inventory less emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP.
3	VOC Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP Programs.	Row 1 minus Row 2.
4	VOC Reductions from RACT Rule Corrections	Amount 1990 base year emissions reduced by required RACT rule corrections.
5	Required 15 Percent VOC Reduction	0.15 times Row 2.
7	Adjusted 1990 Base Year VOC Inventory for 1999	1990 ROP inventory less emissions eliminated through 1999 by Tier 0 FMVCP/Phase 2 RVP.
8	Fleet Turnover Correction (FTC) for 1999	Row 2 minus Row 7.
9	Required ROP VOC Reduction for 1999	ROP Percentage (0.0 to 0.09) times Row 7.
11	Adjusted 1990 Base Year Inventory for 2002	1990 ROP inventory less emissions eliminated through 2002 by Tier 0 FM VCP/Phase 2 RVP.
12	FTC for 2002	Row 7 minus Row 11.
13	Required ROP Reduction for 2002	ROP Percentage (0.0 to 0.09) times Row 11.
14	2002 VOC Target Level	Row 1 minus Rows 3, 4, 5, 8, 9, 12 and 13.
15	Adjusted 1990 Base Year VOC Inventory for 2005	1990 ROP inventory less emissions eliminated through 2005 by Tier 0 FMVCP/Phase 2 RVP.
16	FTC for 2005	Row 15 minus Row 11.
17	Required ROP VOC Reduction for 2005	ROP Percentage (0.0 to 0.09) times Row 15.
18	2005 VOC Target Level	Row 14 minus Rows 16 and 17.

TABLE 7B.—GENERAL PROCESS FOR COMPUTING 2002 AND 2005 TOP NO_X TARGET LEVELS

Row	Description	How computed
1	1990 NO_X ROP Inventory	1990 base year inventory less biogenic emissions and sources outside the nonattainment area.
7	Adjusted 1990 Base Year NO_X Inventory for 1999	1990 ROP inventory less emissions eliminated through 1999 by Tier 0 FMCVP/Phase 2 RVP.
8	Fleet Turnover Correction (FTC) for 1999	Row 1 minus Row 7.
9	Required ROP NO_X Reduction for 1999	ROP Percentage (0.0 to 0.09) times Tow 7.

[8] To facilitate comparison by the reader of Tables 7a and 7b with Table 3, the rows identifiers in the following two tables remain the same as those for the corresponding item in Table 3.

TABLE 7B.—GENERAL PROCESS FOR COMPUTING 2002 AND 2005 TOP NO_X TARGET LEVELS—Continued

Row	Description	How computed
11	Adjusted 1990 Base Year NO_X Inventory for 2002	1990 ROP inventory less emissions eliminated through 2002 by Tier 0 FMCVP/Phase 2 RVP.
12	FTC for 2002	Row 7 minus Row 11.
13	Required ROP Reduction for 2002	ROP Percentage (0.0 to 0.9) times Tow 11.
14	2002 NO_X Target Level	Row 1 minus Rows 8, 9, 12 and 13.
15	Adjusted 1990 Base Year Inventory for 2005	1990 ROP inventory less emissions eliminated through 2005 by Tier 0 FMVCP/Phase 2 RVP.
16	FTC for 2005	Row 15 minus Tow 11.
17	Required ROP NO_X Reduction for 2005	ROP Percentage (0.0 to 0.9) times Row 15.
18	2005 NO_X Target Level	Row 14 minus Rows 16 and 17.

2. How Were the 3 Percent per Year Reductions for the Post 1999–2005 ROP Plan Calculated?

TABLE 8.—2002 AND 2005 ROP TARGET LEVELS

Row	Description	VOC tons/day	NO_X tons/day
1	1990 VOC ROP Inventory	578.7	869.3
2	Adjusted 1990 Base Year VOC Inventory for 1996	455.5	N/R *
3	VOC Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP Programs	123.2	N/R
4	VOC Reductions from RACT Rule Corrections	0.1	N/A *
5	Required 15 Percent VOC Reduction	68.3	N/R
7	Adjusted 1990 Base Year Inventory for 1999	433.7	778.5
8	Fleet Turnover Correction (FTC) for 1999	21.8	90.8
9	Required ROP Reduction for 1999—1% VOC & 8% NO_X	4.3	62.3
11	Adjusted 1990 Base Year Inventory for 2002	420.5	756.7
12	FTC for 2002	13.2	21.8
13	Required ROP Reduction for 2002—0 % VOC and 9 % NO_X	0.0	68.1
14	2002 Target Level	347.7	626.3
15	Adjusted 1990 Base Year VOC Inventory for 2005	412.1	735.6
16	FTC for 2005	8.4	21.1
17	Required ROP VOC Reduction for 2005—0% VOC & 9 % NO_X	0.0	66.2
18	2005 Target Level	339.3	539.0

* N/R means not required, and N/A means not applicable.

3. What Control Strategies Are the District, Maryland and Virginia Including in the Post 1999–2005 ROP Plan?

The post 1999–2005 ROP plan describes the emission reduction credits that the Washington area jurisdictions are claiming toward their 9 percent reduction requirements. We can credit reductions for the ROP requirement for rules promulgated by the EPA and for state measures we have approved as SIP revisions. The control measures used in the post 1999–2005 ROP plan for the Washington area are listed in Tables 9 and 10 of this document and described in more detail in the TSD for this rulemaking. The control measures include all those in the post 1996–1999 portion of the plan, plus additional measures. Table 9 lists those measures credited in the 1996–1999 ROP that continue to produce benefits in the post-1999 period. There are several reasons why a post 1996–1999 measure can also be credited in the post-1999 period. First, the uncontrolled baseline is computed from the1990 levels, not the 1999 levels. Thus, if a source category emits at a rate of one ton of pollutant per 10 units of activity (*e.g.*, VMT or millions of British Thermal Units heat input) and had a 1990 activity level of 100 units, the source would have baseline emissions of 10 tons. If the source categories activity level was projected to grow to 130 units by 1999 and 140 units by 2002, the projected uncontrolled emissions would be 13 tons in 1999 and 14 tons in 2002. If this source category was controlled at a 50 percent control, that is, required to emit at a rate of a half ton per unit of activity by some date before 1999, then the projected, controlled emissions would be 6.5 tons in 1999 and 7 tons in 2002. The reductions would be the projected uncontrolled emissions minus the controlled emissions. The reductions would be 6.5 tons for 1999 and 7 tons for 2002.

Another way a measure included in the post 1996–1999 ROP plan can produce additional emission reduction benefits after 1999 is when increasing portions of the source category are subject to more stringent standards over time. This is true of mobile source controls under the FMVCP and NLEV programs and for EPA's nonroad mobile source standards. As time passes, more and more of the source category is made of newer vehicles or engines that were manufactured to meet the most recent emission standards. For instance, in the case of on-road mobile sources, the emission factor computed using the MOBILE emission factor model declines for future years. Once again, reductions are computed by subtracting a future controlled projected emissions from uncontrolled emissions. The future year *uncontrolled* emissions assume only the FMVCP in place as of 1990 (termed ''Tier 0 FMVCP''), the ''Phase 2 RVP'' standards issued mandated for 1992, and other programs in place in 1990.

The future year *controlled* programs include all the creditable programs issued or adopted since 1990 such as the Tier 1 and 2 FMVCP standards,[9] federal heavy duty on-road diesel engine standards, reformulated gasoline, the enhanced inspection maintenance programs, and the National Low Emission Vehicle program. Because the same future year VMT is used for both the projected uncontrolled and controlled cases, the reductions are net of growth in VMT.

TABLE 9.—VOC AND NO_X EMISSION REDUCTIONS ELIGIBLE FOR CREDIT IN THE POST 1999–2005 ROP PLAN FROM MEASURES IN THE 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Measure	2002 reductions		2005 reductions	
	VOC	NO_X	VOC	NO_X
Tiers 1 & 2 FMVCP, Reformulated Gasoline (On-road), Federal Heavy Duty Diesel Engines rule, NLEV & Enhanced Inspection and Maintenance	56.0	44.9	80.5	85.8
Reformulated Gasoline (Nonroad/Off-road)	2.7	.....	2.9	
Surface Cleaning/Decreasing	4.1	.....	4.4	
Autobody Refinishing	9.3	.....	9.8	
AIM	16.7	.....	17.5	
Consumer Products	4.1	.....	4.3	
Seasonal Open Burning Ban	7.4	1.6	7.4	1.6
Graphic Arts	3.8	.....	4.0	
Landfill Regulations	2.4	.....	2.5	
Non-CTG RACT to 50 TPD—MD/VA/DC	1.5	.....	1.5	
Stage I Enhancement	1.5	.....	1.6	
Expanded State Point Source Regulation to 25 TPD	2.4	.....	2.5	
Stage II Vapor Recovery Nozzles	15.1	.....	15.1	
RFG refueling benefits	2.6	.....	2.3	
Non-road Gasoline Engines Rule	22.2	.....	26.6	
Non-road Diesel Engines	.....	14.9	.....	22.1
State NO_X RACT/beyond RACT	.....	203.8	.....	279.4
Total Creditable Reductions	151.8	265.2	182.9	388.9

The post 1999–2005 ROP plan for the Washington area also includes additional emission reduction measures beyond those included in the post 1996–1999 ROP plan. All the States have adopted limits on certain architectural and industrial maintenance (AIM) coatings that are more stringent than the limits required under the Federal regulations for AIM coatings. The post 1999–2005 ROP plan also includes Virginia's rule for solvent cleaning operations which is based on the Federal maximum achievable control technology (MACT) standard for chlorinated solvent vapor degreasers. The States each have issued rules that regulate VOC emissions from portable fuel containers by setting standards for the design and construction of these containers.

The post 1999–2005 ROP plan also relies upon VOC emission reductions from emissions standards promulgated by EPA for several categories of nonroad mobile sources. These categories are:

(a) Spark ignition outboard, personal water craft and jetboat engines (OB/PWC) and stern drive and inboard engines;

(b) Large spark-ignition engines such as those used in forklifts and airport ground-service equipment;

(c) Recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and

(d) Recreational marine diesel engines.

The 1999–2005 ROP plan also relies upon additional TCMs which are strategies to both reduce VMT and decrease the amount of emissions per VMT, and are considered an essential element of control strategies for nonattainment areas.

The post 1999–2005 ROP plan also relies upon certain voluntary non-regulatory measures as an alternative to traditional ''command and control'' regulatory approaches. Voluntary emission reduction program measures have the potential to encourage new, untried and cost-effective approaches to reduce emissions. Under EPA's guidance, voluntary emission reduction program measures can be approved if the State retains enforceable responsibility for the amount of emission reductions associated with the voluntary measures and meets certain other obligations.

The post 1999–2005 ROP plan's control measures for the Washington area are listed in Table 10 of this document and described in more detail in the TSD for this rulemaking.

[9] The MOBILE model automatically keeps track of when which program is required and thus does not compute any credit for Tier 2 for the 2002 year but will for a 2005 year which is after the 2004 model year.

TABLE 10.—VOC AND NO_X EMISSION REDUCTIONS FROM MEASURES IN THE 1999–2005 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Line #	Measure	2002 Reductions		2005 Reductions	
		VOC	NO_X	VOC	NO_X
1	Measures in 1996–1999 ROP plan (from Table 9)	151.8	265.2	182.9	388.9
2	State Portable Fuel Container Rules—MD/VA	0.9		2.4	
3	State Solvent Cleaning Rules			9.0	
4	EPA's Non-road Engines and vehicles rule—Large Spark Ignition Engine Rule		0.6		0.5
5	EPA's Non-road Engines and vehicles rule—Spark Ignition Marine Engines	1.3		3.1	
6	TCMs in 2004 SIP Revisions	0.3	0.5	0.3	0.7
7	State AIM Rules			12.3	
8	Voluntary Measures			3.19	.19
9	State Portable Fuel Container Rules—DC			0.2	
Total	Reductions	154.3	266.3	213.39	390.29

4. What Are the Creditable Reductions in the Post 1999–2005 ROP Plan?

EPA can only credit reductions in a ROP plan required by section 182(c)(2) if those reductions meet the creditability requirements of sections 182(b)(1)(C) and (D) of the Act. One restriction for creditability is that the reduction has to result from a rule promulgated by EPA, from a permit issued pursuant to Title V of the Act, or from a rule that EPA has approved into the applicable SIP(s) (*See* 302(q) of the Act).

All of the reductions from national rules (all those in Table 9 as well as those listed on lines 4 and 5 of Table 10) for which the States seek credit in their post 1996–1999 and post 1999-2005 ROP plans have been promulgated by EPA. All of the reductions from State rules included in Table 9 and in lines 2 and 3 of Table 10 for which the States seek credit in their post 1996–1999 and post 1999–2005 ROP plans have been approved into the applicable SIP.

As for the rest of the State measures, EPA can only credit the ROP plan with reductions from a measure approved into the applicable SIP, and, hence, can only issue a final rule approving the ROP plan after or concurrently with our approval of state measures projected to generate sufficient reductions to demonstrate ROP. However, EPA can propose approval of an ROP plan if we have proposed approval of enough measures to generate the reductions needed to demonstrate ROP. EPA has already proposed approval for all the measures listed in Table 10. The TCMs in the 1996–1999 ROP plan and the 2004 SIP revisions are being proposed for approval in this notice of proposed rulemaking. The status of each of the remaining items is as follows:

EPA proposed approval of the Maryland and Virginia State AIM rules on May 25, 2004 (69 FR 29674) and June 7, 2004 (69 FR 31780), respectively. For the measures listed in Table 11, a notice of proposed rulemaking (NPR) has been published in the **Federal Register**.

TABLE 11.—NPR SIGNATURE DATES

Measure	Line number in table 9	Date/Citation of NPR
State AIM Rule—DC	7	12/27/04 (69 FR 77149).
Voluntary Measures	8	12/23/04 (69 FR 76889).
State Portable Fuel Container Rules—DC	9	12/29/04 (69 FR 77970).

5. How Does the Post 1999–2005 ROP Plan Demonstrate ROP?

The post 1999–2005 plan demonstrates that the Washington area meets the post 1999–2005 ROP requirement of the Act by showing that the ROP plan will generate sufficient emission reductions to reduce the projected uncontrolled 2002 or 2005 emissions to less than or equal to a target level of emissions for that year which represents a 9 percent reduction in baseline emissions. The 2002 and 2005 NO_X target levels are 626.3 and 539.0 tons/day of NO_X, respectively. (*See* Table 8 of this document.) These target levels each represent a 9 percent reduction in baseline NO_X emissions.

The 2002 and 2005 uncontrolled NO_X emissions are 880.1 and 880.8 tons/day, respectively. Thus, the required NO_X reductions for 2002 are 880.1 minus the target level of 626.3, that is, 253.8 tons/day of NO_X emissions. The required NO_X reductions for 2005 are 880.8 minus the target level of 539.0, that is, 341.8 tons/day of NO_X emissions. The measures listed in Table 9 achieve sufficient reductions to enable the area to achieve the 2002 and 2005 NO_X target levels. As discussed in section IV. E. of this document, these measures are fully creditable towards ROP.

While not a factor in our evaluation for approval, EPA notes that the post 1999–2005 ROP plan also demonstrates reasonable further progress for VOC emissions for 2002 and 2005 in a more generic manner pursuant to section 172(c)(2) of the Act. This is evidenced by the numerous VOC reduction measures in the plan. With the exception of the voluntary measures (the approval of which has been proposed in a separate proposed rulemaking) and the TCMs (the approval of which is also proposed in this document), the bulk of these measures are part of the measures identified in the contingency plan to address the failure to attain by November 15, 1999. As will be discussed in succeeding sections of this document, the approval of the contingency measure plan and the ROP demonstration required by section 182(c)(2) is contingent upon approval of these measures. The attainment demonstration relies on VOC as well as NO_X emission reductions in both the photochemical modeling and weight of

evidence portions of the demonstration. Therefore, reductions in VOC emissions constitute progress towards attainment. However, EPA believes that the average 3 percent per year ROP requirement of section 182(c)(2) has been demonstrated by NO_X reductions alone.

EPA has approved ROP plans under section 182(c)(2) that relied solely upon NO_X reductions without regard to VOC reductions. See 69 FR 42880, July 19, 2004 (proposed at 69 FR 25348, May 6, 2004) and 64 FR 13348, March 18, 1999 (proposed by 63 FR 45172, August 25, 1998).

EPA concludes that the post 1999–2005 ROP plan in the 2004 SIP revisions does demonstrate ROP of at least a nine (9) percent reduction in NO_X baseline emissions in the Washington area for each of the 1999–2002 and 2002–2005 periods. Therefore, EPA believes that we can approve the post 1999–2005 ROP plans submitted by the States for the Washington area on the basis of the NO_X reductions alone.

F. Do the Post 1996–1999 and Post 1999–2005 ROP Plans for the Washington Area Meet the Requirements for NO_X Substitution?

1. Relationship to the Attainment Demonstration

In order to determine whether the post 1996–1999 and post 1999–2005 ROP plans satisfy EPA's guidance and the Act regarding NO_X substitution, we had to examine and evaluate certain aspects of the attainment demonstration plan that the States have also submitted for the Washington area. For purposes of proposing approval of the post 1996–1999 and post 1999–2005 ROP plans, EPA's review of the attainment demonstration was limited to whether the photochemical grid modeling showed that NO_X reductions are useful in reducing ozone concentrations, that the ROP plan substitutes no more NO_X reductions than assumed in the attainment demonstration, and whether the attainment demonstration attained within time periods mandated by the Act. EPA also examined the attainment demonstration to ensure that the attainment demonstration did not rely upon the measures identified in the contingency plan in the event the Washington area fails to attain by November 15, 2005 or fails to achieve post 1996 ROP or a post 1996 ROP milestone. As discussed in Section V. of this document, the continency plan relies upon early implementation of contingency measures. EPA had to ensure that the attainment demonstration did not rely upon these measures in order to propose approval of the contingency plan for failure to attain by November 15, 2005. The attainment demonstration SIPs submitted by the States for the Washington area are the subject of a separate rulemaking that does address all of the required elements.

EPA concludes that the 2004 SIP revisions demonstrate that the relative reduction in ozone precursor emissions from the entire inventory is greater than that used in the photochemical grid modeling for the Washington area and that the weight of evidence shows that the measures creditable towards the 2005 milestone year will result in attainment by no later than November 15, 2005. Furthermore, we have determined that this demonstration does not depend upon any measures in the contingency measure plan, and that the States have used the latest planning assumptions for emissions estimates for all source categories. EPA also concludes that the attainment demonstration modeling shows that NO_X reductions are beneficial towards reducing ozone in the Washington area and that with all the measures in the ROP plan the Washington area will attain by November 15, 2005. EPA further finds that the post 1996–1999 and post 1999–2005 ROP plans substitute fewer NO_X reductions than those needed for attainment by November 15, 2005. EPA, therefore, concludes that the post 1996–1999 and post 1999–2005 ROP plans for the Washington area meet EPA's guidance and the Act for NO_X substitution, and can be approved. A detailed description of our analysis of the local modeling and weight of evidence and its relationship to NO_X substitution is provided in the TSD prepared in support of this rulemaking action. That TSD also includes our detailed evaluation of how the post 1996–1999 and post 1999–2005 ROP plans satisfy the Act's and our guidance for NO_X substitution. A copy of the TSD is available in the E-Docket for this rulemaking and upon request from the EPA Regional Office listed in the Addresses section of this document.

V. Contingency Measure Plan

Sections 172(c)(9) and 182(c)(9) of the Act require that SIPs contain additional contingency measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date, or fails to meet ROP deadlines. The Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided our initial guidance interpreting the contingency measure requirements of 172(c)(9) and 182(c)(9) in the April 16, 1992, General Preamble for Implementation of the Act (*See* 57 FR 13498 at 13510, April 16, 1992). Our interpretation is based upon the language in sections 1872(c)(9) and 1829(c)(9) in conjunction with the control measures requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the April 16, 1992 initial guidance EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emission reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. The State must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions. In subsequent guidance, EPA opined that contingency measures could be implemented early, that is, be implemented prior to the milestone or attainment date.[10]

A. What Are the Contingency Measures Implemented To Address the Failure To Attain by November 15, 1999 and for the 1996–1999 ROP Plan?

The 2004 SIP revisions identify two groups of measures that have been implemented since November 15, 1999. The first of these measures is phase 2 of the RFG program. By opting into the reformulated gasoline program, the States ensured that the further benefits of the program would be implemented on January 1, 2000. Such implementation would be earlier than what would have occurred had RFG been implemented in the area due to reclassification. Under section 181 of the Act, EPA has no enforceable duty to reclassify an area sooner than 6 months after the attainment date.

EPA bases the determination of failure to attain upon air quality monitoring data and thus must have ozone season data for the attainment year in hand. States are required to report air quality data at least quarterly and each report is due no later than 90 days after the end of the quarterly reporting period (40

[10] See Memorandum dated August 13, 1993, From G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, to Air Branch Chief, Regions I–X, entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

CFR 58.35). Thus the earliest EPA would be assured to have data for the first portion (April–June) of the Washington Area's April to October ozone season would have been September 1999. Under section 211(k) of the Act, the RFG program becomes effective in an area one year after the effective date of the reclassification to severe. At the earliest, the RFG program would have been required in the fall of 2000, and at the latest spring of 2001. By opting into the RFG program, the Washington Area States assured that the additional benefits of the second phase of the RFP program would be implemented without any further action by the States or EPA on January 1, 2000. EPA believes it is illogical to penalize nonattainment areas that are taking extra steps, such as implementing contingency measures prior to a deadline, to comport with the CAA's mandate that such states achieve NAAQS compliance as ''expeditiously as practicable.'' EPA has applied this guideline to situations where the reductions occurred prior to the attainment deadline. *See*, e.g., 67 FR 61786, October 2, 2002.

The second phase of the RFG program was implemented prior to EPA's January 24, 2003 rule which determined that the Washington area failed to attain the 1-hour ozone NAAQS by November 15, 1999 and which reclassified it to severe nonattainment. EPA believes, however, the fact that the measure was implemented prior to the effective date of the reclassification should not render it ineligible for use as a contingency measure. After all, if a measure implemented prior to the attainment date can count towards the failure-to-attain contingency requirement, then surely this measure, which was implemented shortly after the attainment deadline, can count towards the failure-to-attain by November 15, 1999 contingency requirement.

The second group of measures are additional measures implemented after November 15, 1999, but before November 15, 2005. These additional measures are the States AIM coatings, portable fuel container (PFC) and solvent cleaning rules discussed in Section IV. E. of this document. A summary of the expected benefits from these measures is presented in Table 12.

TABLE 12.—CONTINGENCY MEASURES

Measure	VOC reductions (tons/day)	Implementation date
Solvent Cleaning Operations—VA	9.0	January 1, 2005.
Portable fuel containers rule—MD	1.7	January 1, 2004.
Portable fuel containers rule—VA	0.7	January 1, 2005.
AIM coatings rule—DC	1.1	January 1, 2005.
AIM coatings rule—MD	6.2	January 1, 2005.
AIM coatings rule—VA	5.0	January 1, 2005.
Total	23.7	
3 percent of 1999 baseline emissions	13.0	3 percent of 433.7 TPD VOC.

While these additional measures were not adopted as contingency measures before the Washington area was reclassified to severe nonattainment (or before November 15, 1999) and then implemented to take effect without any further action by the States or EPA after the area failed to attain, EPA believes that the adoption of these additional measures also fulfill the contingency measure requirement for a serious area. The SIPs applicable to the Washington area did not identify contingency measures prior to the reclassification, and, the ultimate remedy for such a defect would be to implement additional measures over and above those in the applicable SIP. These measures were adopted and made enforceable after the March 1, 2003 effective date that of EPA final rule reclassifying the Washington area to severe nonattainment for failing to attain the ozone NAAQS. (*See*, 68 FR 3410, January 24, 2003.) The adopted rules implementing the measures require compliance before the severe area attainment date of November 15, 2005.

In the General Preamble (57 FR 13498 at 13510, April 16, 1992), we stated that the contingency measure would need to achieve reductions in the year following the year in which the failure has been identified. In the January 24, 2003 final rule, EPA issued the determination that the Washington area had failed to attain by November 15, 1999. Thus, under the guidance in the General Preamble the measures should have been implemented no later than one year from March 1, 2003, the effective date of the January 24, 2003 final rule. However, the States have adopted the additional rules to fulfill the contingency measure requirement, these measures have been implemented on the dates shown in Table 12, and the measures have been submitted as SIP revisions. EPA believes that it would serve no purpose to disapprove the contingency measure plan simply because the measures were not implemented by March 1, 2004, since the remedy would require yet another rule adoption process which cannot cure the problem of having missed a deadline that is nearly two years in the past.

As discussed in Section IV. E. of this document, EPA has not yet approved all these contingency measures. The States have calculated the amount of VOC or NO_X reductions that are required to meet the 3 percent contingency requirement relative to the 1999 adjusted base year inventory. The amount of VOC reduction needed is 13.0 tons per day (433.7 x 0.03). EPA has already approved the first three measures listed in Table 12 into the Maryland or Virginia SIP. The reductions from these three measures total 11.4 of the needed 13 tons per day. However, we can propose approval of the contingency plan if EPA has proposed approval of the measures in that plan. As indicated in Section IV. E. of this document, EPA has already proposed approval of all these measures.

EPA is proposing to approve the contingency plan as containing adopted and implemented measures to address the Washington area's failure to attain by November 15, 1999 and for the 1996–1999 ROP plan. Any final action to approve the contingency plan can only occur concurrently with or after approval of all the measures as SIP revisions.

B. What Measures Are in the Contingency Measures Plan for the Post 1999–2005 ROP Plans and for Failure To Attain by November 15, 2005?

1. Measures in the Plan

The States have identified a number of fully adopted measures which can be implemented with minimal further action on their part and with no additional rulemaking actions to fill the contingency plan in the event the Washington area has a failure to make ROP or fails to attain by November 15, 2005. These measures include:

(a) The District's rule for solvent cleaning operations rules which are based on the Federal maximum achievable control technology (MACT) standard for chlorinated solvent vapor degreasers and thus require higher levels of technology than required previous District requirements;

(b) The District's and Maryland's rules for consumer products that set more stringent limits than the otherwise applicable Federal rules;

(c) The District's and Virginia's rules covering refinishing operations of motor vehicles. These rules set more stringent VOC control standards for these operations than otherwise applicable Federal regulations. The main difference in the state rules versus the federal rule is that the federal rule regulates only the VOC content of the repair coatings whereas the state rules also require the use of high transfer-efficiency painting methods (*e.g.*, high volume low pressure spray guns), and controls on emissions from equipment (*e.g.*, spray gun) cleaning, housekeeping activities (*e.g.*, use of sealed containers for clean-up rags), and operator training; and

(d) Post 2005 reductions from the portable fuel containers rules in all three States. The reductions from Virginia's, Maryland's and the District's rules are credited towards the ROP and attainment plans only to the extent the measure produces benefits by January 1, 2005 and November 15, 2005. The measure will accrue additional benefits after November 15, 2005 as additional old containers are replaced by ones meeting the new requirements. These additional benefits are credited towards the contingency plan.

2. Early Implementation Schedule

The measures in the contingency measure plan will be implemented upon a fixed schedule whether or not EPA issued a finding of failure that the Washington area failed achieve a post 1999 ROP milestone or fails to attain by November 15, 2005. All of the rules except Maryland's portable fuel containers regulation will take effect January 1, 2005. Maryland's portable fuel containers regulation took effect January 1, 2003. Thus, all of the rules can be implemented without further action by the State or EPA.

In guidance issued in 1993, we allow the use of surplus reductions that have already been achieved before the failure has been identified to serve as contingency measures in the year after the failure for attainment and ROP plans. If an area then fails to meet a milestone which triggers the implementation of contingency measures, the state would have one year to backfill the contingency measure. (*See* 57 FR 13498, 13511, April 16, 1992).

The States have not used the VOC reductions on which the contingency measure plan relies in either the attainment demonstration or post 1996–1999 and post 1999–2005 ROP plans. The attainment demonstration relies upon a total of over 210 TPD reduction in VOC emissions. Given that the contingency measures are about 6 percent of the total number of reductions and given that the implementation date of January 1, 2005, EPA believes that these contingency measures are not reasonably available control measures (RACM) because they would not advance the attainment date from the 2005 ozone season to the 2004 ozone season. Therefore, the early implemented contingency measures are surplus to the attainment demonstration. A summary of the expected benefits from these measures is presented in Table 13.

TABLE 13.—CONTINGENCY MEASURES

Measure	VOC Reductions (tons/day)	Implementation date/remark
Solvent Cleaning Operations—DC	2.7	January 1, 2005.
Motor Vehicle Refinishing—DC	0.6	January 1, 2005.
Motor Vehicle Refinishing—VA	2.0	January 1, 2005.
Consumer Products—MD	2.9	January 1, 2005.
Consumer Products—DC	1.1	January 1, 2005.
Portable fuel containers rule—DC	0.3	Post 2005 benefits only.
Portable fuel containers rule—MD	1.5	Post 2005 benefits only.
Portable fuel containers rule—VA	1.7	Post 2005 benefits only.
Total	12.8	
3 percent of 2002 baseline emissions	12.6	3 percent of 420.5 TPD VOC

3. Approval Status

EPA can only approve the contingency plan after or concurrently with EPA's approval of any State contingency measures rules into the applicable SIP. However, we can propose approval of the contingency measure plan once EPA has proposed approval of the state contingency measures into the applicable SIP.

EPA has already published final or proposed rules in the **Federal Register** to approve all of the measures in the contingency plan for the Washington area. The status of each measure in the contingency plan is briefly described in the following table.

TABLE 14.—CONTINGENCY MEASURE APPROVAL STATUS

Measures Approved into SIPs:	
Consumer Products—MD	Approved—12/09/03, 68 FR 68523.
State Portable Fuel Containers—VA	Approved—07/08/04, 69 FR 31893.

TABLE 14.—CONTINGENCY MEASURE APPROVAL STATUS—Continued

State Portable Fuel Containers—MD	Approved—06/29/04, 69 FR 38848.
Motor Vehicle Refinishing—VA	Approved—06/24/04, 69 FR 35253.
Measures Proposed for Approval into SIPs:	
Motor Vehicle Refinishing—DC	12/23/04, 69 FR 77688.
Solvent Cleaning—DC	12/29/04, 69 FR 77971.
Consumer Products—DC	12/28/04, 69 FR 77688.
State Portable Fuel Container Rules—DC	12/29/04, 69 FR 77970.

4. Conclusion

EPA is proposing to approve the contingency plan as containing adopted and implemented measures to address the contingency measure requirements in the event the Washington area fails to attain the 1-hour ozone NAAQS by November 15, 2005 and for any future failures to achieve ROP or a ROP milestone. Any final approval is contingent upon approval of sufficient State measures to achieve the 3 percent of baseline emission requirement. To have sufficient measures to achieve the 3 percent of baseline emission requirement, EPA will have promulgate final rules approving all of the measures listed in Tables 12 and 13.

VI. Vehicle Miles Traveled (VMT) Offset SIP and Transportation Control Measures (TCMs)

A. What Is a VMT Offset SIP?

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's ROP milestones and attainment demonstration requirements. Our interpretation of section 182(d)(1)(A) is discussed in the April 16, 1992, General Preamble (57 FR 13498). Section 182(d)(1)(A) of the Act specifies submission of the VMT Offset SIP by November 15, 1992, for any severe and above ozone nonattainment area. However, EPA has concluded that section 182(i) of the Act authorizes EPA to adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions of new requirements applicable to an area which has been reclassified. In the final rule reclassifying the Washington area to severe nonattainment, EPA established the submission deadline of March 1, 2004 for the section 182(d)(1) SIP revision as EPA set for all the other new SIP revision elements applicable to reclassified area. *See* 68 FR 3410 at 3422, January 24, 2004.

B. EPA's Analysis of VMT Offset SIP in the 2004 SIP Revisions

In the ''General Preamble'' EPA explained how States are to demonstrate that the VMT requirement is satisfied. Sufficient measures must be adopted so projected motor vehicle VOC emissions will stay beneath a ''ceiling level'' established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented, or offset, by TCMs. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the previous ozone season due to the control measures in the SIP, the VMT Offset requirement is satisfied. In order to make these projections, a curve of vehicle emissions is modeled to represent the effects of required reductions from the following mandatory programs: an enhanced performance standard vehicle I/M program, Phase 2 RVP, RFG, and the FMVCP. (*See* 57 FR 13498 at 13521–13523, April 16, 1992.) As described in the General Preamble, the purpose of section 182(d)(1)(A) of the Act is to prevent growth in motor vehicle emissions from negating the emissions reduction benefits of the federally mandated programs in the Act. EPA believes it is appropriate to interpret the VMT Offset SIP provisions of the Act to account for how States can practicably comply with each of the provision's elements.

A detailed description of the States' VMT offset SIPs for the Washington area and our evaluation of how those SIPs satisfy the applicable requirements of the Act and EPA's guidance is provided in the TSD prepared in support of this rulemaking. That TSD is available in the E-Docket of this rulemaking and from the EPA Regional Office listed in Addresses section of this document.

The States' plans show, and EPA's evaluation confirms, that the modeled curve for the Washington area does not turn upward (indicating the control programs are offsetting increases in emission from growth in VMT). Therefore, no TCMs would be necessary to offset emissions from growth in VMT under section 182(d)(1)(A). However, the District, Maryland and Virginia have chosen to include certain TCMs as measures to help meet the ROP and attainment requirements.

C. What TCMs Are Part of the SIP?

Typical TCMs included in the plans are bicycle racks on buses and at transit stations, park-and-ride lots, additional bus shelters, additional bicycle lanes, purchase of compressed natural gas buses to replace diesel fueled buses, and additional/improved side walks to encourage walking. The TCMs also include outfitting 866 buses with continuously regenerating filters and the use of ultra-low sulfur diesel fuel. The TCMs are described in more detail in Appendix H of the revised plan document, entitled, ''Revised State Implementation Plan (SIP) Revision, Phase I Attainment Plan for the Washington DC-MD-VA Nonattainment Area'' dated April 16, 1999 (''April 1999 Post-1996 Plan''). This plan was submitted as a SIP revision on May 25, 1999, May 20, 1999, and on May 25, 1999 by the District, Maryland and Virginia, respectively. Further TCMs in the February 19, 2004 plan, are described in section 7.5 and Appendix G of that document. The February 19, 2004 plan was submitted as a SIP revision on February 24, 2004 by Maryland, and on February 25, 2004 by the District and Virginia.

EPA concludes that the States have submitted sufficient TCMs to meet the requirement of section 182(d)(1)(A) of the Act. EPA is proposing to approve the VMT Offset SIP submitted by the States on the dates listed in Table 2 of this document.

VII. Motor Vehicle Emissions Budgets (MVEBs)

A. Background on Transportation Conformity

1. What Is Transportation Conformity?

Transportation conformity is a CAA requirement for metropolitan planning organizations and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations; worsen existing violations; or delay timely attainment. The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

2. What Are Motor Vehicle Emissions Budgets?

As described in the CAA and our conformity rule, control strategy SIPs such as ROP plans and attainment demonstrations, and maintenance plan SIPs, must establish and identify MVEBs to ensure areas continue to demonstrate ROP and reach attainment. These MVEBs are ''ceilings'' for emissions from motor vehicles, and are used in conformity analyses to determine whether transportation plans and projects conform to the attainment, ROP, and maintenance SIPs. In order for transportation plans and projects to conform, estimated emissions from transportation plans and projects must not exceed the applicable MVEBs contained in attainment demonstration, ROP or maintenance plans.

3. Which Motor Vehicle Emissions Budgets Usually Apply?

According to the transportation conformity rule, MVEBs in a submitted SIP may apply for conformity purposes even before we have approved the SIP, under certain circumstances. The MVEBs in a submitted SIP cannot be used before we have approved the SIP *or* until and unless we have found the MVEBs of the submitted SIP adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e) and the EPA's May 14, 1999 memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision'' as amended by 69 FR 40004, July 1, 2004. (*See* 61 FR 36117, July 9, 1996; 62 FR at 43783–43784, August 15, 1997; and 69 FR 40004 at 400038, July 1, 2004 for more details about the applicability of submitted and approved budgets.)

B. What Motor Vehicle Emissions Budgets Currently Apply in the Washington Area?

As stated elsewhere in this document, EPA's approvals of the 1996–1999 ROP plan and the earlier versions (those submitted during 1998 and 2000) of the attainment demonstration SIP revisions were vacated by the court. Therefore, the MVEBs in these SIP revisions are not currently in the approved SIP. EPA had issued adequacy findings for the MVEBs in the post 1996–1999 ROP plan and the earlier versions of the attainment demonstration SIP revisions (those submitted during 1998 and 2000) prior to our January 3, 2001 final approval (66 FR 586) of those SIPs. (*See* 64 FR 43698, August 11, 1999, and 65 FR 36439, June 8, 2000.) Even though EPA issued findings of adequacy on these budgets, EPA has always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking on the SIPs governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once a SIP approval is vacated the prior adequacy determination on the vacated budgets is not resurrected.

Therefore, the only MVEBs in the approved SIPs for the Washington area are those for VOC in the approved 15% ROP plan for 1996. (*See* 64 FR 42629, August 5, 1999; 65 FR 44686, July 19, 2000; and 65 FR 59727, October 6, 2000.) However, on December 16, 2003 (68 FR 70012), EPA made a finding of adequacy for the 2005 ROP motor vehicle emission budgets in the SIP revisions submitted by Virginia, Maryland and the District of Columbia on August 19, 2003, September 2, 2003, and September 5, 2003, respectively (the December 16, 2003 finding of adequacy). In accordance with the transportation conformity rule, once found adequate, these 2005 MVEBs superseded the motor vehicle emissions budgets in the 15 percent ROP plan because these 2005 budgets cover a later year and are more stringent. (*See* 40 CFR 93.118)

C. What Effect Will This Action Have on Motor Vehicle Emissions Budgets for the Washington Area?

This action proposes to approve the post 1996–1999 ROP plan for the Washington area and its 1999 MVEBs into the District of Columbia, Maryland and Virginia SIPs. This action also proposes to approve the 1999–2005 ROP plan and its 2002 and 2005 MVEBs as revisions to the District of Columbia, Maryland and Virginia SIPs. A subsequent final action to approve of the 2005 budgets in the 1999–2005 ROP plan will supersede the December 16, 2003 finding of adequacy.

Likewise, by this proposed rulemaking, EPA is also initiating the adequacy process under 40 CFR 93.118(f) for the 2005 budgets in the 1999–2005 ROP plan submitted by Maryland on February 24, 2004 and by the District and Virginia on February 25, 2004. Should EPA make a final adequacy finding on these 2005 ROP budgets, prior to taking a final action to approve them as SIP revisions, that adequacy finding would supersede the December 16, 2003 adequacy finding, and thus make the 2005 budgets in the 1999–2005 ROP plans submitted by Maryland on February 24, 2004 and by the District and Virginia on February 25, 2004 the applicable 2005 ROP budgets.

D. What Are the NVEBs Identified in the ROP Plan for the Washington Area?

The motor vehicle emissions budgets for 1999 in the 1996–1999 ROP plan are 128.5 tons per day of VOC and 196.4 tons per day of NO_X. The motor vehicle emissions budgets in the 1999–2005 ROP plan are:

(1) For 2002, 125.2 tons per day for VOC and 290.3 tons per day of NO_X; and

(2) For 2005, 97.4 tons per day for VOC and 234.7 tons per day of NO_X.

VIII. Prerequisites for Approval of the Post 1996–1999 and Post 1999–2005 ROP Plans

Approval of the ROP plans for the Washington area also requires approval of the associated contingency plans. Therefore, EPA is proposing to approve the post 1996–1999 ROP plans, the post 1999–2005 ROP plans and the contingency measures plans submitted by the District, Maryland and Virginia for the Washington area. Approval of the ROP plans requires previous or concurrent SIP-approval of all the emission reduction measures upon which the ROP demonstrations rely. Likewise, approval of the contingency measure plans requires prior or concurrent SIP approval of the measures in those plans. With respect to other ROP plans, all of the measures are either Federal measures that have been promulgated by EPA or state measures that have been approved by EPA as SIP revisions into the District's, Maryland's and Virginia's SIPs. However, as

discussed in section V. of this document, not all of the contingency measures have been finally approved at this time. EPA has, however, at least proposed approval of all of these measures. Final approval of the post 1996–1999 ROP plans, the post 1999–2005 ROP plans and the contingency measures plan cannot be granted unless and until EPA has fully approved these contingency measures into the applicable SIPs.

IX. Proposed Actions

A. The District of Columbia—Post 1996–1999 Rate-of-Progress Plan and TCMs

EPA is proposing approval of the District of Columbia's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on November 3, 1997, as supplemented on May 25, 1999, and the TCMs in Appendix H of the May 25, 1999 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

B. The District of Columbia—1990 Base Year Inventory Revisions

EPA is proposing approval of the revision to the 1990 Base Year Emissions Inventory submitted by the District of Columbia on September 5, 2003 as supplemented on February 25, 2004.

C. The District of Columbia—Post 1999–2005 Rate-of-Progress Plan and TCMs

EPA is proposing approval of the District of Columbia's post 1999–2005 ROP plan SIP revision for the Washington area which was submitted on September 5, 2003 as supplemented on February 25, 2004 and the TCMs in Appendix J of the February 25, 2004 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

D. The District of Columbia—VMT Offset SIP

EPA is proposing to determine that the District of Columbia has adopted sufficient TCMs to address growth in VMT and number of vehicle trips as required under section 182(d)(1)(A).

E. The District of Columbia—Contingency Measure Plan

EPA is proposing approval of the District of Columbia's contingency measure plan SIP revision for the Washington area which was submitted on September 5, 2003, as supplemented on February 25, 2004. Final approval is contingent upon final approval of enough measures in the contingency measure plan to represent a 3 percent reduction of the 2002 baseline emissions and final approval of the following measures identified by the District of Columbia as measures in the plan: The District's rules for consumer products, motor vehicle refinishing, AIM, solvent cleaning and portable fuel containers.

F. Maryland—Post 1996–1999 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Maryland's post 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 24, 1997, as supplemented on May 20, 1999, and the TCMs in Appendix H of the May 20, 1999 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revision.

G. Maryland—1990 Base Year Inventory Revisions

EPA is proposing approval of the revision to the 1990 Base Year Emissions Inventory submitted by Maryland on September 2, 2003 as supplemented on February 24, 2004.

H. Maryland—Post 1999–2005 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Maryland's post 1999–2005 ROP plan SIP revision for the Washington area which was submitted on September 2, 2003 as supplemented on February 24, 2004 and the TCMs in Appendix J of the February 24, 2004 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

I. Maryland—VMT Offset SIP

EPA is proposing to determine that Maryland has adopted sufficient TCMs to address growth in VMT and number of vehicle trips as required under section 182(d)(1)(A).

J. Maryland—Contingency Measure Plan

EPA is proposing approval of Maryland's contingency measure plan SIP revision for the Washington area which was submitted on September 3, 2003, as supplemented on February 24, 2004. Final approval is contingent upon final approval of enough measures in the contingency measure plan to represent the 3 percent reduction of the 2002 baseline emissions and of the following measures identified by Maryland as measures in the plan: Maryland's rules for consumer products, AIM, and portable fuel containers.

K. Virginia—Post 1996–1999 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Virginia's post 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 29, 1997, as supplemented on May 25, 1999, and the TCMs in Appendix H of the May 25, 1999 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

L. Virginia—1990 Base Year Inventory Revisions

EPA is proposing approval of the revision to the 1990 Base Year Emissions Inventory submitted by Virginia on August 19, 2003 as supplemented on February 25, 2004.

M. Virginia—Post 1999–2005 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Virginia's post 1999–2005 ROP plan SIP revision for the Washington area which was submitted on August 19, 2003 as supplemented on February 25, 2004 and the TCMs in Appendix J of the February 25, 2004 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

N. Virginia—VMT Offset SIP

EPA is proposing to determine that Virginia has adopted sufficient transportation control measures necessary to address growth in VMT and number of vehicle trips as required under section 182(d)(1)(A).

O. Virginia—Contingency Measure Plan

EPA is proposing approval of Virginia's contingency measure plan SIP revision for the Washington area which was submitted on August 19, 2003, as supplemented on February 25, 2004. Final approval is contingent upon final approval of enough measures in the contingency measure plan to represent the 3 percent reduction of the 2002 baseline emissions and of the following measures identified by Virginia as measures in the plan: Virginia's rules for motor vehicle refinishing, AIM, solvent cleaning and portable fuel containers.

P. Motor Vehicle Emissions Budgets

EPA is proposing to approve the MVEBs established and identified in the Post 1996–1999 and Post 1999–2005 ROP Plans for the Washington area submitted by the District, Maryland and Virginia on the dates as provided in this document. The MVEBs for 1999 in the 1996–1999 ROP plan are 128.5 tons per day of VOC and 196.4 tons per day of NO_X. The MVEBs in the 1999–2005 ROP plan are:

(1) For 2002, 125.2 tons per day for VOC and 290.3 tons per day of NO_X; and

(2) For 2005, 97.4 tons per day for VOC and 234.7 tons per day of NO_X.

EPA is also initiating the adequacy process under 40 CFR 93.118(f) for the 2005 budgets in the 1999–2005 ROP plans. EPA will not be initiating a separate adequacy process. Persons wishing to comment on the adequacy of these MVEBs should do so at this time.

EPA is soliciting public comments on all these proposed actions and the associated issues discussed in this document. These comments will be considered before taking final actions.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to approve the District of Columbia's, Maryland's and Virginia's post 1996–1999 and post 1999–2005 ROP plans, changes to the 1990 base year inventory, a contingency measures plan, certain transportation control measures (TCMs), and a demonstration that each SIP contains sufficient transportation control measures to offset growth in vehicle miles traveled (VMT) as necessary to demonstrate ROP and attainment of the 1-hour national ambient air quality standard (NAAQS) for the Metropolitan Washington, DC area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: January 5, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–617 Filed 1–11–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL 7860–2]

Proposed Approval of Waste Characterization Activities at the Hanford Central Characterization Project for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, we, or Agency) is announcing, and soliciting public comment for 45 days on, EPA's proposed approval of the Hanford Central Characterization Project (CCP) to characterize retrievably-stored, contact-handled, transuranic (TRU) debris waste for disposal at the Waste Isolation Pilot Plant (WIPP). EPA is also proposing to designate any changes or expansions to this waste characterization approval as Tier 1, according to EPA's recently effective procedures for approval of WIPP waste generator sites. A Tier 1 designation means that DOE must first obtain written approval from EPA prior to disposing of waste characterized using new or revised processes, equipment, or waste streams. The documents related to this proposed approval are available for review in the public dockets listed in **SUPPLEMENTARY INFORMATION**. In accordance with our 40 CFR 194.8(b) approval process, the EPA conducted an inspection of the Hanford CCP from September 8–12, 2003. The purpose of the inspection was to determine the technical adequacy of the CCP as implemented at Hanford for the characterization of transuranic waste from the Plutonium Finishing Plant (PFP) to be disposed of at the WIPP in New Mexico. During the EPA inspection, EPA evaluated several waste characterization (WC) activities used to characterize retrievably-stored, contact-handled debris waste. EPA evaluated the equipment, procedures and personnel training/experience for acceptable knowledge (AK), nondestructive assay (NDA), nondestructive examination (NDE) and data transfer for the WIPP Waste Information System (WWIS).

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before February 28, 2005.

ADDRESSES: Comments may be submitted by mail to: EPA Docket

Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0477. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Feltcorn, Office of Radiation and Indoor Air, (202) 343–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2004–0477. 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 Air and Radiation 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 a.m.–9 p.m., Friday-Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets

at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2004–0477. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2004–0477. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0477.

3. *By hand delivery or courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0477. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0477.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE operates the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of transuranic (TRU) radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste in the United States consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for WC activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194).

In July 2004, EPA finalized changes to § 194.8(b) of the WIPP Compliance Criteria that modified the approval process for waste characterization programs at TRU waste generator/storage sites. According to these changes, EPA's waste characterization approval process will follow these steps for newly approved sites:

- EPA will conduct a baseline inspection at a TRU waste generator/storage site in accordance with the § 194.8 requirements and evaluate various waste characterization program components based on the site's demonstration of its capabilities.
- Following a baseline inspection, EPA will issue a **Federal Register** notice discussing the inspection results and a proposed ''baseline compliance decision.'' The **Federal Register** notice will specify what subsequent WC program changes or expansion must undergo further EPA inspection or approval under section 194.24 by assigning ''tiering'' designations to these activities.
- EPA will seek public comment on the proposed baseline compliance decision and place supporting documentation in the public dockets.
- After consideration of public comment, EPA will issue a final baseline compliance decision for a TRU waste site. Following this approval, EPA will continue to evaluate and approve, if necessary, changes to the approved WC program activities in accordance with the assigned tiering designations.

Waste generator sites are permitted to initiate waste characterization activities at a site prior to EPA's inspection. EPA inspectors observe all major elements of the waste characterization process during the baseline inspection. However, the waste generator sites are not permitted to ship characterized waste to WIPP without EPA's written approval.

Today's proposed baseline compliance decision for the Hanford CCP is the first action under the new approval process at 40 CFR 194.8(b). The Central Characterization Project was established by DOE to augment the ability of TRU waste sites to characterize and certify waste in accordance with EPA's WIPP Compliance Criteria. Because the CCP is essentially a mobile waste characterization facility, EPA treats CCP at Hanford (as we have with the CCP at other waste generator sites) as a separate WC program from the main Hanford site. Therefore, the Hanford CCP must meet all of the waste characterization and quality assurance requirements of the WIPP Compliance Criteria.

EPA conducted the inspection of the Hanford CCP from September 8–12, 2003. The purpose of the inspection was to determine the technical adequacy of the Hanford CCP to characterize TRU debris waste from the Plutonium Finishing Plant using acceptable knowledge (AK), nondestructive assay (NDA), nondestructive examination (NDE), and data transfer to the WIPP

Waste Information System (WWIS). EPA inspectors observed testing of debris waste drums to measure radiological contents using the Mobile Segmented Gamma Scanner (SGS). As part of NDE, EPA inspectors also observed the examination of the physical content of debris waste drums using real-time radiography (RTR). (Visual examination was not evaluated as part of this inspection. Visual examination of these contact-handled TRU debris containers was performed using the Hanford main site's approved processes.) EPA's inspection identified several findings of non-conformance and concerns that prevented EPA from issuing an approval for the Hanford CCP. While DOE worked to resolve EPA's inspection findings, the Hanford CCP facility continued to characterize waste but did not ship any waste to WIPP. In fact, all of the Hanford CCP waste for which DOE is seeking approval, is currently characterized and awaiting EPA's approval for shipment.

In 2004, DOE was able to demonstrate adequate resolution of the inspection findings and concerns to EPA.

Between the time when EPA conducted the inspection and the time when the inspection findings were resolved, EPA's changes to the waste characterization approval process became effective (October 14, 2004). Under the newly revised 40 CFR 194.8(b), EPA is proposing to approve the disposal of retrievable-stored, contact-handled, TRU debris waste, characterized by the Hanford CCP at the WIPP using AK, NDA using the Mobile Segmented Gamma Scanner (SGS), NDE using real-time radiography (RTR). (Visual examination was not evaluated as part of this inspection. Visual examination of these contact-handled TRU debris containers was performed using the Hanford main site's approved processes.) EPA's inspection report is available from our docket and online. The inspection report describes what we inspected, what we determined to be technically adequate, what we identified as deficiencies and the corrective action that was required for EPA's proposed approval. In addition, the inspection report explains the basis for the tiering requirement and the subsequent reporting requirements.

EPA is proposing a Tier 1 designation for any changes to the approved Hanford CCP waste characterization activities. This means that DOE must obtain written approval from EPA prior to using any new or revised processes, equipment, or waste streams.

When EPA finalized the changes to the Compliance Criteria, EPA indicated that ''the first approvals conducted under the new process are likely to be highly detailed and very intensive, since EPA will need to work with DOE and stakeholders to ensure that the full range of waste characterization activities is identified and placed in appropriate reporting/approval tiers.'' We envisioned that this scheme, applied at a typical DOE waste generator site, would address a variety of possible program changes or expansions as clean-up operations progressed or more sophisticated techniques were developed. In such a case, various tiering levels would be necessary to address the relative significance of potential program changes. The Hanford CCP, however, is not typical of the situation we would expect for most approvals. As noted previously, Hanford CCP has already completed its intended waste characterization activities. All characterization was accomplished using exclusively the equipment and procedures described in our proposed approval, and was applied solely to the PFP debris waste stream. Because CCP operations at Hanford have concluded, we do not expect any changes or expansions to its waste characterization program. Therefore, for efficiency and simplicity, we are categorizing any and all changes as Tier 1. We believe this approach is simple and expedient, given that changes are not expected. Furthermore, this is appropriate given that any changes, if they did occur, would require re-deployment of the CCP at Hanford and warrant a high level of scrutiny. We emphasize that EPA does not believe that the Hanford CCP baseline compliance decision is typical of the inspections and approvals that will be done in the future under the new requirements of 40 CFR 194.8(b).

In summary, through this **Federal Register** notice, EPA is notifying the public that EPA is proposing to approve the Hanford CCP to characterize retrievably-stored, contact-handled, TRU debris waste from PFP for disposal at WIPP using AK; NDA using the Mobile Segmented Gamma Scanner (SGS); NDE using real-time radiography (RTR). (Visual examination was not evaluated as part of this inspection. Visual examination of these contact-handled TRU debris containers was performed using the Hanford main site's approved processes.) EPA is also proposing a Tier 1 designation for any and all changes or expansions to this approval. Additional EPA approval is required prior to applying approved processes and equipment to new waste streams, and prior to the use of new equipment or procedures to the approved waste stream.

SUMMARY OF HANFORD CCP APPROVAL

Waste characterization element	PFP debris waste	PFP solid waste
AK	Approved	Not approved.
NDA	Approved—SGS	Not approved.
NDE	Approved—RTR	Not approved.
	Approved—VE*	Not approved.
WWIS	Approved	Not approved.
Load Management	Not approved	Not approved.

* Approved process for main Hanford site.

Following a review and evaluation of public comments, EPA will finalize the proposed baseline compliance decision for the Hanford CCP. EPA will notify DOE of our final decision via letter and post the final decision on our Web site.

Dated: January 4, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 05–618 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229 and 238

[Docket No. FRA–2004–17645, Notice No. 2]

RIN 2130–AB23

Locomotive Crashworthiness

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On November 2, 2004, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (69 FR 63890) proposing to establish comprehensive, minimum standards for locomotive crashworthiness. In that NPRM, FRA established a January 3, 2005 deadline for submission of written comments. FRA has received a request to extend the comment period to give interested parties additional time to review, analyze, and submit comments on the NPRM. After considering this request, FRA has decided to extend the comment period until February 3, 2005. This notice announces the extension of the comment period.

DATES: Written Comments: Comments must be received by February 3, 2005. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA–2004–17645 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments to the DOT electronic docket Web site.
- Fax: Comments may be faxed to the following number: 1–202–493–2251.
- Mail: Comments may be mailed to the Docket Management Facility at the U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Hand deliver comments to Room PL–401 on the plaza level of the Nassif Building, which is located at 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal e-Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to http://dms.dot.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Punwani, Office of Research and Development, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493–6369); Charles L. Bielitz, Mechanical Engineer, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6314); or Darrell L. Tardiff, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6038).

Issued in Washington, DC, on January 5, 2005.

Robert D. Jamison,

Acting Administrator.

[FR Doc. 05–570 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 572 and 598

[Docket No. NHTSA–2004–17694; NHTSA–2004–18864]

RIN 2127–AJ10; 2127–AI89

Federal Motor Vehicle Safety Standards; Side Impact Protection; Anthropomorphic Test Devices; ES–2re Side Impact Crash Test Dummy

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

ACTION: Reopening of comment periods; request for comment on addendum to initial regulatory flexibility analysis.

SUMMARY: This document reopens the comment period on a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 214, ''Side Impact Protection,'' to add a dynamic pole test to the standard, and on an NPRM on adding specifications and qualification requirements for a new mid-size adult male crash test dummy for use in the pole test. The agency is taking this action in response to a petition from the Alliance of Automobile Manufacturers requesting additional time to submit comments. The agency is reopening the comment period for 90 days. This document also informs readers that the agency will be placing in the docket an addendum to an initial regulatory flexibility analysis (IRFA) relating to the proposed addition of the dynamic pole test to FMVSS No. 214. Comments are requested on the addendum.

DATES: Comments to docket numbers NHTSA–2004–17694 published May 17, 2004 (69 FR 27990), and NHTSA–2004–18864 published September 15, 2004 (69 FR 55550), and on the addendum to the IRFA (Docket No. 17694), must be received by April 12, 2005.

ADDRESSES: You may submit comments (identified by the DOT DMS Docket Number) by any of the following methods:

Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for the rulemaking to which you are commenting. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act discussion under the Public Participation heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William Fan, NHTSA Office of Crashworthiness Standards (202) 366–4922), or Deirdre Fujita, NHTSA Office of Chief Counsel (telephone (202) 366–2992; fax (202) 366–3820). Both of these officials may be reached at 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In May 2004, NHTSA published a notice of proposed rulemaking that proposed to upgrade FMVSS No. 214, ''Side Impact Protection,'' by requiring that all passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less protect front seat occupants against head, thoracic, abdominal and pelvic injuries in a vehicle-to-pole test simulating a vehicle crashing sideways into narrow fixed objects like telephone poles and trees (69 FR 27990, May 17, 2004; Docket 2004–17694). The NPRM proposed that compliance with the pole test would be determined in tests using a new, second-generation test dummy representing mid-size adult males (the ''ES–2re'' crash test dummy) and a new test dummy representing small adult females (the ''SID–IIsFRG'' test dummy). The NPRM also proposed using the new dummies in the standard's existing vehicle-to-vehicle test that uses a moving deformable barrier (MDB) to simulate a moving vehicle being struck in the side by another moving vehicle. NHTSA provided a 150-day comment period for the proposal, which closed October 14, 2004.

Publication of NPRMs to add specifications and qualification requirements for the ES–2re and SID–IIsFRG crash test dummies to 49 CFR Part 572 (NHTSA's regulation on anthropomorphic test devices) followed the FMVSS No. 214 proposal. A proposal for the ES–2re was published September 15, 2004 (69 FR 55550; Docket No. 18864). The comment period for that NPRM closed November 15, 2004. An NPRM proposing specifications and qualification requirements for the SID–IIsFRG test dummy was published on December 8, 2004 (69 FR 70947; Docket No. 18865). A 90-day comment period was provided.

Petition

The Alliance of Automobile Manufacturers (Alliance) petitioned the agency to re-open the comment period for the FMVSS No. 214 NPRM for at least an additional eight months. The Alliance believed that the ES–2re and SID–IIsFRG test dummies were not available in sufficient quantities for member companies to assess the proposed pole test procedures. The Alliance indicated that dummy manufacturers were not able to supply the test dummies in response to manufacturers' demand. The petitioner stated that eight months is needed to provide sufficient time for Alliance members to complete dummy component tests (the petitioner estimated that three to four months is needed for this); to undertake vehicle tests (the petitioner suggested this would take another three to four months); and to analyze data and draft their comments (petitioner stated those steps would take another one to two months).

The Alliance also petitioned to extend the comment period for the ES–2re NPRM for eight months. The petitioner stated that it needs the time to facilitate a comprehensive technical evaluation of the dummy and perform fleet testing, and that the eight months would align the comment closing date with that requested by the Alliance for the FMVSS No. 214 NPRM. The petitioner believed that the 150-day comment period provided for the May 2004 FMVSS No. 214 NPRM contrasts with a nine-month comment period that NHTSA provided in 1988 when the agency proposed to adopt the MDB test into FMVSS No. 214.

Agency Decision

The agency is reopening the comment periods for the FMVSS No. 214 and the ES–2re NPRMs for 90 days. The 90 day period coincides with the comment period that the agency has provided for the SID–IIsFRG NPRM. We note that the ES–2re and SID–IIsFRG dummies were available following publication of the FMVSS No. 214 NPRM in May 2004 and that the 150 day comment period provided ample time for manufacturers to obtain and begin evaluating the test dummies and to perform fleet assessments. However, vehicle manufacturers did not know the calibration procedures and values that the agency was considering for the dummies' performance requirements until publication of the Part 572 NPRMs in September (ES–2re) and December 2004 (SID–IIsFRG). Reopening the comment period gives manufacturers time to assess the dummies' performance and to conduct fleet testing using the calibrated dummies.

NHTSA believes that a 90 day extension is sufficient and that providing 8 months is unwarranted. The Alliance stated that manufacturers need three to four months to do ''component testing'' of the dummies. We believe that component testing can be done in a matter of days or weeks rather than months. Also, calibration procedures were published for the ES–2re dummy in September and for the SID–IIsFRG in early December. We also estimate that six weeks is sufficient for conducting vehicle tests and for evaluating the data, based on the agency's experience with testing vehicles under NHTSA's consumer information New Car Assessment Program (NCAP). We further estimate that drafting and submitting comments on this priority rulemaking can be done in less than a month. All told, this period amounts to not more than 3 months. A longer period would unnecessarily delay key decisions by NHTSA about the FMVSS No. 214 rulemaking and would delay the potential societal benefits associated with a final rule.

It is noted that the 90 day period does not even include the period that has passed since the closing dates of the comment periods for the FMVSS No. 214 and ES–2re NPRMs (October 14, 2004 and November 15, 2005, respectively). From those dates until today, manufacturers could have been and presumably were working on dummy and vehicle assessment. Thus, as a practicable matter, more than 90 days has been provided. It is further noted that the agency will consider late comments to the extent possible.

The 8-month period that the Alliance requested is too long. The petitioner has not explained how the manufacturers have been using the 150 day comment period of the FMVSS No. 214 NPRM to respond to the proposal. Information obtained by NHTSA from the two dummy manufacturers indicate that they were able to fill orders of the SID–IIsFRG and ES–2re dummies and of the conversion kits (converting a SID–IIs to the SID–IIsFRG by the addition of the floating rib guide modifications and an ES–2 to an ES–2re by addition of the rib extensions) within a reasonable time. One manufacturer shipped full dummies or conversion kits within nine days on the average from receipt of order, while the other needed less than 8 weeks for full dummies and 4 weeks for kits. The agency is not convinced that a good faith effort to obtain the test dummies went unheeded by the dummy manufacturers.

We further disagree with the petitioner's view that an 8 month extension is supported by the agency's decision in 1988 to provide a 9 month comment period for the NPRM on the MDB test. The comment period for that rulemaking was extraordinarily long because it was the first time that a full scale dynamic impact test had been proposed for FMVSS No. 214. In contrast, a pole test with an instrumented dummy, substantially similar to the test proposed in the May 2004 NPRM, is already an option being used in FMVSS No. 201, ''Occupant protection in interior impact,'' and manufacturers are thus familiar with the protocol. Also, the deformable barrier was a new test device with its own properties, and was much more complex than the rigid pole used in the pole test. In addition, there were three new test dummies under consideration in the MDB rulemaking to represent a 50th percentile adult male: General Motors supported the BioSID; the European community supported the EuroSID; and NHTSA supported the SID. The three dummies had different characteristics and new injury criteria, each of which had to be individually considered. In contrast, the May 2004 NPRM only proposes the ES–2re as the 50th percentile male test dummy used in the NPRM. Not only is this the sole test dummy proposed as the representative device for the mid-size male, all vehicle manufacturers were familiar with the dummy through use of the ES–2 in vehicle development and NCAP-type programs in Europe, Japan and Australia. In light of these facts, reopening the comment period for an additional 8 months is unwarranted.

Accordingly, the public comment closing dates for DOT Docket Nos. 17694 and 18864 are reopened for 90 days as indicated in the **DATES** section of this document.

Addendum to Initial Regulatory Flexibility Analysis

NHTSA is preparing an addendum to the initial regulatory flexibility analysis (IRFA) that was contained in the Preliminary Economic Assessment (PEA) for the May 17, 2004 NPRM on FMVSS No. 214. The addendum will be placed in Docket No. 17694. (The PEA is the first entry in Docket No. 17694). The addendum to the IRFA discusses the economic impacts on small vehicle manufacturers, of which there are four. Comments are requested on the addendum to the IRFA. Comments should be submitted to Docket. No. 17694 within the comment period reopened by today's **Federal Register** document.

Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the appropriate docket number in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2004–12345,'' you would type ''12345.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the

comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

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

Issued on January 5, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–548 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122304D]

RIN 0648–AN25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 2 to the Monkfish Fishery Management Plan; Correction

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

ACTION: Notice of availability; request for comments; correction.

SUMMARY: On January 3, 2005, NMFS published a notification that the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council have submitted Amendment 2 to the Monkfish Fishery Management Plan (FMP) (Amendment 2) incorporating the draft Final Supplemental Environmental Impact Statement (FSEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), for Secretarial review and requested comments from the public. Amendment 2 was developed to address essential fish habitat and bycatch issues, and to revise the FMP to address several issues raised during the public scoping process. In the January 3, 2005, notification, NMFS inadvertently referred to this action as a proposed interim rule. This document corrects that error.

DATES: Comments on Amendment 2 to the Monkfish FMP must be received on or before March 3, 2005.

FOR FURTHER INFORMATION CONTACT: Allison R. Ferreira, Fishery Policy Analyst, phone: (978) 281–9103; fax: (978) 281–9135; e-mail: *allison.ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION: An NOA for Amendment 2 to the Monkfish FMP was published in the **Federal Register** on January 3, 2005 (70 FR 68), with public comment accepted through March 3, 2005. Public comments are being solicited on Amendment 2 and its incorporated documents through the end of the comment period on the NOA (i.e., March 3, 2005). A proposed rule that would implement Amendment 2 may be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All comments received by March 3, 2005, whether specifically directed to Amendment 2 or the proposed rule, will be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on March 3, 2005; that does not mean postmarked or otherwise transmitted by that date.

NMFS in the **ADDRESSES** section of the January 3rd publication inadvertently referred to the amendment as a ''proposed interim rule.'' However, because a proposed rule may be published in the near future following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act, NMFS is correcting the NOA **Federal Register** publication to identify clearly that the January 3, 2005, publication is requesting public comments on the Amendment 2 document along with the FSEIS, RIR, and IRFA.

Therefore, in the NOA for Amendment 2 to the Monkfish FMP published on January 3, 2005, which was the subject of FR Doc 04–28738, in the second line of the **ADDRESSES** section in the first column on page 68, the words ''proposed interim rule'' are removed and in their place the words ''proposed amendment'' are added.

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

Dated: January 5, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–625 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 8

Wednesday, January 12, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TB–05–01]

National Advisory Committee for Tobacco Inspection Services; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) announcement is made of a forthcoming meeting of the National Advisory Committee for Tobacco Inspection Services.

DATES: The meeting will be held on February 1, 2005, at 9 a.m.

ADDRESSES: The meeting will be held at the Old Town Alexandria Holiday Inn, 480 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: William O. Coats, Associate Deputy Administrator, Tobacco Programs, AMS, USDA, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elect officers, discuss recent legislation affecting mandatory inspection, and review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

The meeting is open to the public. Persons, other than members who wish to address the Committee at the meeting should contact William O. Coats, Associate Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by January 24, 2005, and inform us of your needs.

Dated: January 5, 2005.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–578 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Form FNS–798 and FNS–798A, WIC Financial Management and Participation Report With Addendum

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's (FNS) intention to request an extension for a currently approved information collection, the WIC Financial Management and Participation Report with Addendum.

DATES: Comments on this notice must be received by March 14, 2005.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Patricia N. Daniels, (703) 305–2749.

SUPPLEMENTARY INFORMATION: *Title:* WIC Financial Management and Participation Report with Addendum.

OMB Number: 0584–0045.

Expiration Date: 07–31–2005.

Type of Request: Extension of a Currently Approved Collection Form.

Abstract: Section 17(f)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(4)) provides that ''State agencies shall submit monthly financial reports and participation data to the Secretary'' (*See also* 7 CFR 246.25(b)(1)). The WIC Financial Management and Participation Report with Addendum (FNS–798 and FNS–798A) are the forms State agencies complete to comply with this requirement. FNS and State agencies use the reported information for program monitoring, funds management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and interested parties.

In addition, nonentitlement programs, such as the WIC Program, are required to conduct an annual closeout and reconciliation of grants. Departmental regulations at 7 CFR 3016.23(b) require that ''[a] grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269).'' WIC Program regulations at 7 CFR 246.17(b)(2) instruct State agencies to ''submit to FNS, within 150 days after the end of the fiscal year, final fiscal year closeout reports.'' The final WIC Financial Management and Participation Report (FNS–798) submitted for the year with its addendum (FNS–798A) are used as a substitute for the SF–269, because they maintain the integrity of WIC's two grant components (food and nutrition services and administration (NSA)) as well as the four NSA grant components (program management, client services, nutrition education, and breastfeeding promotion and support).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual burden on respondents was previously 4,660.04 hours. This extension includes an adjustment that adds one respondent which increases the total annual burden by 52.96 hours.

Respondents: Directors or Administrators of WIC State agencies.

Estimated Number of Respondents: 89 respondents.

Estimated Number of Responses per Respondent: Seventeen.

Estimated Total Annual Burden on Respondents: 4,713 hours.

Dated: January 5, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–562 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2005 and project updates for 2004. Agenda topics will include electing a chairperson for 2005, public outreach methods, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on January 25, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Dan Ritter, Acting District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Acting Stevensville District Ranger and Designated Federal Officer. Phone: (406) 777–5461.

Dated: January 6, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–608 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of the clearance for an existing information collection in order to render service to associations of producers of agricultural, forestry, fisheries products and federations, and subsidiaries, thereof, as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by March 14, 2005.

FOR FURTHER INFORMATION CONTACT: Tracey L. Kennedy, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 3252, Washington, DC 20250–3252, Telephone (202) 690–1428.

SUPPLEMENTARY INFORMATION:

Title: Annual Survey of Cooperative Involvement in International Markets.

OMB Number: 0570–0020.

Expiration Date of Approval: February 28, 2005.

Type of Request: Extension of a currently approved information collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS), formerly Agricultural Cooperative Service (ACS), is to assist farmer-owned cooperatives in improving the economic well-being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926).

Authority and Duties of Division (7 U.S.C. 453).

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries, thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) Acquire, analyze, and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) Conduct studies of the economic, legal, financial, social, and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) Make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; report to the association so surveyed the results thereof; and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) Acquire from all available sources, information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.

RBS also has a stated objective to ''assist U.S. farmer cooperatives to expand their participation in international trade of agricultural products and supplies and to review their progress.''

As trade agreements are implemented and domestic farm supports are reduced, a global presence is increasingly important to producers, their communities, and to job-creation and retention in agri- and food-related industries. Measurement and monitoring of cooperatives' global presence are stated objectives of RBS's International Trade Program. In order to carry out the Agency's mission and objectives, RBS needs to collect information from the cooperative community. This information collection

is designed to provide time-series data that will provide a better understanding of the opportunities and limitations of producer-owned cooperatives in global markets. The data provide the basis for research on trade-related issues affecting cooperatives, and background for trade-related policy analysis.

Beginning in 1980, RBS's predecessor, ACS, collected cooperative trade data at 5-year intervals. Value of cooperative exports by commodity and destination was measured, as well as information related to method of sale. Values of imports by cooperatives, commodity, and country of origin were collected in 1986 and 1991. Since 1997, data have been collected on an annual basis, as it became apparent that data collected at intervals longer than 1 year do not provide for meaningful analysis. Further, data collected prior to 1997 had been strictly limited to exports and imports, neglecting other important international arrangements such as strategic alliances and foreign direct investments. A more comprehensive, annual data set accomplishes stated Cooperative Service objectives to measure and monitor cooperatives' global presence. These data are generally not available to RBS unless provided by the cooperatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one (1) hour per response.

Respondents: Cooperatives involved in international activities.

Estimated Number of Respondents: 105.

Estimated Number of Responses per Respondent: One per year.

Estimated Number of Responses: 105.

Estimated Total Annual Burden on Respondents: 105 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., STOP 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of a public record.

Dated: January 4, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–576 Filed 1–11–05; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Census Bureau

Field Representative Exit Questionnaire (BC–1294/1294(D))

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek , Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Geraldine Burt, Census/Field Division, Room 1784/FOB 3, Washington, DC 20233–4400, and 301–763–1935.

SUPPLEMENTARY INFORMATION:

I. Abstract

Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. The Field Representative Exit Survey is used to collect data from a sample of our former current survey interviewers (field representatives) and decennial operations interviewers (enumerators). The purpose of the Field Representative Exit Survey is to determine the reasons for interviewer turnover and what the Census Bureau might do to help reduce its turnover rate for interviewing staff.

We will use Form BC–1294 to collect data from field representatives who leave the Census Bureau. We will use Form BC–1294(D) to collect data from the enumerators hired to work on the 2010 Test Census in 2005/2006 (and in the 2008 Dress Rehearsal in 2007) who stop working voluntarily before the operation for which they were hired is completed. Both forms ask questions about the factors that affected an interviewer's decision regarding voluntarily leaving employment with the Census Bureau. The BC–1294 and BC–1294(D) cover the same topics, but the questions and response choices on the BC–1294(D) have been tailored to decennial census operations.

Interviewer turnover is of heightened concern during a decennial census because of the short time periods for data collection operations and the potential adverse impact excessive turnover would have on completing operations as scheduled. The 2010 Test Censuses are being used by the Census Bureau to test and experiment with procedures in a simulated census environment in preparation for the 2010 Census. The second of the major field tests for the 2010 Test Census will be conducted in 2006. The primary goal of the 2006 Census Test will be to test and improve the field and automated systems needed to support the major design components of the 2010 Census. The results of the 2006 Census Tests will inform the design of the 2008 Dress Rehearsal. Emphasis in the 2006 Census Test will be on continuing the assessment of new methods and systems proposed for 2010, including an analysis of the impact of the use of hand-held computers for locating addresses and route planning, interviewing and collection of Global Positioning Systems (GPS) coordinates on field staffing.

The information collected via the Field Representative Exit Survey will help the Census Bureau develop plans to reduce turnover in its current survey and decennial interviewing staff. These results allow for better informed management decisions regarding the field work force and the implementation of more effective recruitment, pay plans, interviewer training, and retention strategies for both current and decennial interviewers.

II. Method of Collection

The data will be collected by telephone. Interviews with former current survey field representatives should take approximately seven (7) minutes. We estimate that interviews will be conducted with a total of 500 field representatives on a yearly basis. Approximately every month, a sample of one-half of all field representatives who voluntarily resigned within the period will be contacted by telephone to complete a BC–1294 questionnaire.

The form BC–1294(D) contains a few more questions related to decennial census working conditions, including the impact of proposed automation of some data collection operations. Interviews with former enumerators should take approximately ten (10) minutes. Initial hiring for the 2006 Test Census is scheduled to begin in 2005 for early operations. The 2010 Census Dress Rehearsal is scheduled for 2008, with initial hiring to begin in 2007. It is estimated that interviews will be conducted with 375 former enumerators in 2005, 2006, and 2007. Beginning approximately two weeks after the start of the 2006 Tests Census operations in 2005 (and in 2007 for the 2008 Dress Rehearsal), a sample of enumerators who have continuously been in a non-pay status for a period of two weeks will be contacted by telephone to complete a BC–1294(D) questionnaire.

III. Data

OMB Number: 0607–0404.

Form Number: BC–1294, BC–1294(D).

Type of Review: Regular Submission.

Affected Public: Former Census Bureau Interviewers (Field Representatives and Enumerators).

Estimated Number of Respondents: 500 Former Current Survey Interviewers; 375 Former 2010 Test Census Enumerators.

Estimated Time Per Response: 7 minutes for Former Current Survey Interviewers; 10 minutes for Test Census Enumerators.

Estimated Total Annual Burden Hours:

FY05:
- 59 hours for former Current Survey Interviewers.
- 10 hours for former 2010 Test Census Enumerators (2006 Test early operations).
- 69 Total Hours.

FY06:
- 59 hours for former Current Survey Interviewers.
- 54 hours for former 2010 Test Census Enumerators (2006 Test).
- 113 Total Hours.

FY07:
- 59 hours for former Current Survey Interviewers.
- 10 hours for former 2010 Test Census Enumerators (2008 Dress Rehearsal early operations).
- 69 Total Hours.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 5 U.S.C. 3101 and Title 13 U.S.C. 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–564 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Special Census Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to J. Michael Stump or Tonika Butler, Bureau of the Census, 4700 Silver Hill Rd. Stop 5780, Room Number 1314, SFB #2, Washington, DC 20233–5780 and 301–763–1429.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Special Census Program is a reimbursable service offered and performed by the Census Bureau for the government of any state; county, city, or other political subdivision within a state, for the government of the District of Columbia, and for the government of any possession or area over which the U.S. exercises jurisdiction, control, or sovereignty, and other governmental units which require current population data between decennial censuses.

Many states distribute funds based on current population statistics. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, and water treatment facilities.

The Census Bureau will use the following forms to update addresses listed on the Census Bureau's Master Address File (MAF) and to enumerate populations in special censuses:

SC–1, Special Census Enumerator Questionnaire—This interview form will be used to collect special census data at regular housing units (HU).

SC–1(SUPP), Continuation Form for Enumerator Questionnaire—This interview form will be used to collect special census data at a regular HU when there are more than five members in a household.

SC–1(Telephone), Special Census Enumeration Questionnaire—This interview form will be used to collect special census data when a respondent calls the local special census office.

SC–2, Special Census Special Place Questionnaire—This interview form will be used to collect special census data at group quarters (GQ) in special places (SP) such as hospitals, prisons, boarding and rooming houses, campgrounds, hotels, college dormitories, military facilities, and convents.

SC–116, Group Quarters Enumeration Control Sheet—This page will be used by Special Census enumerators to list residents/clients at GQs.

SC–351, Group Quarters Initial Contact Checklist—This checklist will be used by enumerators to collect contact information and to determine the type of GQ.

SC–920, Address Listing Page—This page will include existing addresses from the MAF. Special Census enumerators will update these addresses, if needed, at the time of enumeration.

SC–921(HU), Housing Unit Add Page—This page will be used by enumerators to add HUs that are observed to exist on the ground and that are not contained on the address listing page.

SC–921(SP), Special Place/Group Quarter Add Page—This page will be used by enumerators to add SPs/GQs that are observed to exist on the ground and that are not reflected in the address listing page.

The Special Census Program will operate as a generic OMB clearance including a library of forms and the operational procedures that will be used for the many special censuses we anticipate conducting this decade. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time.

We will submit for OMB's review and approval, under cover of a change worksheet, any special-purpose questions requested by customers to be added to special census questionnaires.

II. Method of Collection

The Special Census Program will use the Census 2000 Update/Enumerate (U/E) methodology. Enumerators will canvass their assigned areas with an address register that contains addresses obtained from the MAF. Special Census enumerators will update the address information, as needed, based on their observation of HUs and/or SPs/GQs that exist on the ground. Additionally, enumerators will interview households at regular HUs and residents at GQs using the appropriate Special Census questionnaire.

III. Data

OMB Number: 0607–0368.

Form Numbers: SC–1, SC–1(SUPP), SC–1(Telephone), SC–2, SC–116, SC–351, SC–920, SC921(HU), SC–921(SP).

Type of Review: Regular.

Affected Public: Individuals or households, business or other for profit entities, not-for-profit institutions.

Estimated Number of Respondents: (September 2002 through early 2008)

Enumerator Questionnaire—2,050,000 respondents

Special Place Questionnaire—14,000 respondents

Address Listing Page—2,050,000 respondents

Group Quarters Enumeration Control Sheet—1,250 respondents

Housing Unit Add Page—50,000 respondents

Special Place/Group Quarters Add Page—250 respondents

Group Quarters Initial Contact Checklist—1,250 respondents

Estimated Time Per Response:

Enumerator Questionnaire—7 minutes

Special Place Questionnaire—5 minutes

Address Listing Page—1 minute

Group Quarters Enumeration Control Sheet—10 minutes

Housing Unit Add Page—1 minute

Special Place/Group Quarters Add Page—1 minute

Group Quarters Initial Contact Checklist—10 minutes

Estimated Total Annual Burden Hours: 45,959.

Estimated Total Annual Cost: There are no costs to respondents other than that of their time to respond.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 196.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–566 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Short Supply Regulations, Petroleum Products

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, Department of Commerce, Room 6704, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection requires the submission of documents to support export license applications, or the retention of documents for shipments made under applicable License Exceptions of petroleum products derived from a naval petroleum reserve.

II. Method of Collection

Submission with BIS form BIS–748P and record retention.

III. Data

OMB Number: 0694–0026.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 15 to 60 minutes per response.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–565 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Export Controls of High Performance Computers

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, Department of Commerce, Room 6704, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

These recordkeeping and reporting requirements are clear statements of normal business records for high performance computers (HPC) that are expected to be maintained by end-users in destinations where there is a potential for diversion to unauthorized endusers. The records must be available for inspection by U.S. officials to maintain surveillance of HPC usage and implementation of appropriate safeguards.

II. Method of Collection

Reports and recordkeeping.

III. Data

OMB Number: 0694–0073.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 22.

Estimated Time Per Response: 5 to 30 minutes per response.

Estimated Total Annual Burden Hours: 78 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–567 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Multipurpose Application

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, (202) 482–4848, Department of Commerce, Room 6704, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy. This revision includes the burden associated with 3rd party disclosures, certifications and notification requirements imposed on the public.

II. Method of Collection

Submitted on form BIS–748P.

III. Data

OMB Number: 0694–0088.

Form Number: BIS–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 15,775.

Estimated Time Per Response: 58 minutes per response.

Estimated Total Annual Burden Hours: 14,214.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–568 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Import Certificates, End-User Certificates, and Delivery Verification Procedures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pat Heinig, BIS ICB Liaison, (202) 482–4848, Department of Commerce, Room 6704, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is the certification of the overseas importer to the U.S. government that he/she will import specific commodities from the U.S. and will not reexport such commodities except in accordance with U.S. export regulations.

II. Method of Collection

Requests for information, copies of documents or requirements to send notifications submitted to BIS.

III. Data

OMB Number: 0694–0093.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 6,421.

Estimated Time Per Response: 15 minutes per response.

Estimated Total Annual Burden Hours: 1,968 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–569 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–827

Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that sales by the respondents in this review, covering the period December 1, 2002, through November 30, 2003, have been made at prices less than normal value (NV). In addition, we are preliminarily rescinding this review with respect to Tianjin Custom Wood Processing Co., Ltd. (TCW), because TCW reported, and we confirmed, that it made no shipments of subject merchandise to the United States during the period of review (POR). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Marin Weaver, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474 and (202) 482–2336, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2003, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC) (the order) covering the period December 1, 2002, through November 30, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended*

Investigation; Opportunity to Request Administrative Review, 68 FR 67401–02.

On December 4, 2003, in accordance with 19 CFR 351.213(b), a PRC exporter, Shandong Rongxin Import and Export Co., Ltd. (Rongxin), requested an administrative review of the order on certain cased pencils from the PRC. On December 31, 2003, the petitioners, Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company, requested that the Department conduct an administrative review of exports of subject merchandise made by eight producers/exporters.[1] In addition, on December 31, 2003, China First Pencil Company, Ltd. requested a review of its exports of subject merchandise to the United States.

The Department published a notice announcing its initiation of an antidumping duty administrative review covering the exports of the above–referenced companies during the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 3117–3119 (January 22, 2004).[2] On January 30, 2004, we issued antidumping duty questionnaires to the exporters/producers subject to this review.

In its February 19, 2004, response to the Department's questionnaire, TCW stated that it did not export subject merchandise to the United States during the POR. CFP/Three Star, Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC), and Rongxin submitted timely questionnaire responses. The remaining exporters/producers did not submit questionnaire responses and did not request that we extend the applicable deadlines for doing so.[3]

On August 19, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the time limit for the preliminary results of this review until December 30, 2004. See *Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47866 (August 6, 2004).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent to Rescind Review in Part

We are preliminarily rescinding this review with respect to TCW because it made no shipments of subject merchandise to the United States during the POR. The Department reviewed CBP data and entry documents which indicate that TCW did not export subject merchandise to the United States during the POR.

Separate–Rates Determination

In proceedings involving non–market-economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to governmental control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that its export activities are sufficiently independent so that it should be granted a separate rate. Rongxin, CFP/Three Star, and SFTC provided the separate–rates information we requested and reported that their export activities are not subject to governmental control.

We examined the separate–rates information the respondents provided in order to determine whether the companies are eligible for a separate rate. The Department's separate–rates test, which is used to determine whether an exporter is independent from governmental control, does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. See *Certain Cut-to–Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts*

[1] The eight producers/exporters covered by the petitioners' request are Anhui Import/Export Group Corporation, Beijing Light Industrial Products Import/Export Corporation, China First Pencil Company, Ltd., Orient International Holding Shanghai Foreign Trade Co., Ltd., Rongxin, Sichuan Light Industrial Products Import/Export Corporation, Shanghai Three Star Stationery Industry Corp., and Tianjin Custom Wood Processing Co., Ltd.

[2] The Department initiated separate reviews of China First Pencil Company, Ltd. (CFP) and Shanghai Three Star Stationery Industry Corp. (Three Star) based on timely requests from domestic interested parties. Subsequent to the initiation of this review, in the final results of the 2001-2002 administrative review the Department collapsed CFP and Three Star for purposes of its antidumping analysis. See *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29266 (May 21, 2004) and the accompanying Issues and Decision Memorandum at Comment 6. In light of that decision, the Department for this review continues to consider CFP and Three Star as a single entity, hereinafter referred to as CFP/Three Star. Also see Memorandum to the File from Charles Riggle: Affiliation and Collapsing of China First Pencil Co., Ltd. and Shanghai Three Star Stationery Industry Corp., dated December 30, 2004.

[3] On July 26, 2004, we sent letters to Sichuan Light Industrial Products Import Export Corp. (Sichuan) and Anhui Import/Export Group Corp. (Anhui) notifying them that the applicable deadlines for them to respond to our questionnaire had passed and that we had not received their questionnaire responses or requests to extend the deadline for receipt of their questionnaire responses. We asked them to notify us in writing if they had no shipments, sales or entries of subject merchandise. We notified Sichuan and Anhui that, if they did not respond, we may use facts available which could be adverse to their interests. We also sent a letter to the Chinese Ministry of Foreign Trade and Economic Cooperation (MOFTEC) informing them that Sichuan and Anhui had not responded to our questionnaire and that we may use facts available which could be adverse to the companies' interests. In addition, we informed MOFTEC that the questionnaire that we sent to Beijing Light Industrial Products Import Export Corporation (Beijing Light) had been returned as undeliverable and asked that MOFTEC forward a copy of the questionnaire to Beijing Light. On August 27, 2004, we sent an additional letter to MOFTEC notifying them that our letter to them, dated July 26, 2004, was returned to us after three unsuccessful delivery attempts and repeated the contents of our July 26, 2004, letter. We confirmed that this letter was delivered to MOFTEC on September 1, 2004. We did not receive any response to our July 26, 2004, letters or to our August 27, 2004, letter.

Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from governmental control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20508 (May 6, 1991).

Rongxin, CFP/Three Star, and SFTC reported that the merchandise under review was not subject to restrictive stipulations associated with their business license (*e.g.*, pencils were not on the government's list of products subject to export restrictions or subject to export licensing requirements). Rongxin, CFP/Three Star, and SFTC submitted copies of their business licenses in their questionnaire responses. We found no inconsistencies in their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, Rongxin, CFP/Three Star, and SFTC submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of governmental control over the companies. Thus, the evidence on the record supports a preliminary finding of the absence of *de jure* governmental control based on an absence of restrictive stipulations associated with the business licenses of Rongxin, CFP/Three Star, and SFTC and the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

Typically, the Department considers the following four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87 (May 2, 1994); see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Rongxin, CFP/Three Star, and SFTC reported that they determine prices for sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Moreover, Rongxin, CFP/Three Star, and SFTC stated that they negotiated their prices directly with their customers. Also, each company claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Rongxin, CFP/Three Star, and SFTC have the authority to negotiate and sign contracts and other agreements. Further, these companies claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, Rongxin, CFP/Three Star, and SFTC reported that they have autonomy in making decisions regarding the selection of management. All three companies indicated that their selection of management is not subject to review or guidance from any governmental organization.

Finally, Rongxin, CFP/Three Star, and SFTC reported that there are no restrictions on the use of their export revenues. There is no evidence on the record with respect to any of these companies to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, the evidence on the record supports a preliminary finding of the absence of *de facto* governmental control based on record statements and supporting documentation showing the following: (1) Rongxin, CFP/Three Star, and SFTC set their own export prices independent of the government and without the approval of a governmental authority, (2) Rongxin, CFP/Three Star, and SFTC have the authority to negotiate and sign contracts and other agreements, (3) Rongxin, CFP/Three Star, and SFTC have adequate autonomy from the government regarding the selection of management, and (4) Rongxin, CFP/Three Star, and SFTC retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this review by Rongxin, CFP/Three Star, and SFTC demonstrates an absence of governmental control, both in law and in fact, with respect to their exports of the merchandise under review in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for purposes of these preliminary results, we are granting separate rates to Rongxin, CFP/Three Star, and SFTC .

Fair–Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the export price (EP) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated EPs for sales by Rongxin, CFP/Three Star, and SFTC to the United States because the subject merchandise was sold directly to unaffiliated customers in the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) prior to importation and constructed export–price methodology was not otherwise indicated. We made deductions from the net sales price for foreign inland

freight and foreign brokerage and handling. Each of these services was provided by an NME vendor and, thus, as explained in the ''Normal Value'' section below, we based the deductions for these movement charges on values from a surrogate country.

For the reasons stated in the ''Normal Value'' section below, we selected India as the primary surrogate country. We valued foreign brokerage and handling using Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review*, 63 FR 48184 (September 9, 1998). We identify the source used to value foreign inland freight in the ''Normal Value'' section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if the subject merchandise is exported from an NME country and available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology the Department uses to calculate the NV of merchandise exported from NME countries. The Department has treated the PRC as an NME country in every proceeding involving the PRC. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

In accordance with section 773(c)(3) of the Act, the factors of production (FOP) the parties used in producing pencils include but are not limited to the following inputs: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in one or more market–economy countries that are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise. We determined that India is comparable to the PRC in terms of *per capita* gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. In instances where we were unable to use Indian surrogate–value information, we relied on Indonesian, Filipino, and U.S. values as discussed below. Indonesia and the Philippines are also comparable to the PRC in terms of *per capita* gross national product and the national distribution of labor, and both are significant producers of comparable merchandise. See *Memorandum From Ronald Lorentzen, Director, Office of Policy, to Thomas F. Futtner, Acting Office Director, AD/CVD Enforcement*, dated February 11, 2004, and *Memorandum from Paul Stolz to File*, dated December 30, 2004, which are available in the public file located in the Department's Central Records Unit, room B099, of the main Commerce building (CRU).

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, as applicable, except labor using the WPI for the appropriate surrogate country as published in *International Financial Statistics*. We valued the FOPs as follows:

1) For producers that purchased Chinese lindenwood pencil slats, we valued slats using publicly available, published U.S. prices for American basswood lumber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries.[4] The U.S. lumber prices for basswood are published in the 2004 *Hardwood Market Report* for the period December 2002 through November 2003.
2) For producers that manufactured slats from Chinese lindenwood timber, we valued the timber using publicly available, published U.S. prices for American basswood timber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries. The U.S. timber prices for basswood are published in the *Sawlog Bulletin*. Timber prices were published in the *Sawlog Bulletin* in the months of January, February, April, May, July, August, October, and November 2003.
3) We valued the following material inputs using Indian import data from the World Trade Atlas (WTA) for December 2002 through November 2003: acetone, alkyds resin, beeswax, butanes, butyl ester, calcium carbonate, cellulose, erasers, dibutyl ester, diluent, dyestuff, ethanol, ethyl ester, ferrules, foam grips, foil, formaldehyde, glitter, glue, graphite powder, hardening oil, heat transfer film, kaolin clay, key chains, lithopone, malice acid ester, methyl benzene, nitro–paint/lacquer, penetrating agent, pigment, plastic, printing ink, propylene, pyroxylin, sawdust/wood, soap, soft agent, stearic acid, sticker paper, talcum powder, titanium, toppers, velvet wrap, wax, and dye.
4) We valued black and color cores using Indonesian import data from the WTA for January 2002 through December 2002. We were not able to calculate separate surrogate values for black versus color cores based on information on the record of this review.

We also valued the following material inputs using Indonesian import data: erasers, graphite powder, tallow, castor oil, and syrup.

5) In accordance with 19 CFR 351.408 (c)(1), we valued certain material inputs used by CFP/Three Star at acquisition cost because it purchased these inputs from a market- economy supplier and paid them for using a market–economy currency.
6) We valued the following packing materials using Indian import data from the WTA for December 2002 through November 2003: cardboard cartons, master cartons, packing boxes, packing tape, pallets, paper labels, plastic boxes, plastic canisters, plastic shrink wrap,

[4] In the antidumping investigation of certain cased pencils from the PRC, the Department found Chinese lindenwood and American basswood to be virtually indistinguishable and thus used U.S. prices for American basswood to value Chinese lindenwood. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625, 55632 (November 8, 1994). This methodology was upheld by the Court of International Trade. See *Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States*, Slip Op. 97-151 (Ct. Int'l. Trade, Nov. 13, 1997) at 16.

plastic straps, and polybags.

7) We valued electricity using the 2002 Indian industry rate for electricity (U.S. dollars/kWh) from the publicly available *Key World Energy Statistics (2002) (Energy Statistics)*, published by the International Energy Agency. We also valued diesel fuel and coal using the Indian value reported in *Energy Statistics*. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We have declined to value one energy input, steam, for these preliminary results as we are unable to find an appropriate surrogate value.

8) In accordance with 19 CFR 351.408(c)(3), we valued labor using a regression–based wage rate for the PRC listed in the Import Administration web site under ''Expected Wages of Selected NME Countries.'' See http://ia.ita.doc.gov/wages.

9) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using the financial statements of Asia Wood International Corporation (Asia Wood), a wood–products producer in the Philippines. As stated above, the Philippines is a significant producer of comparable merchandise. Asia Wood's financial statements represent the best available record information with which to derive financial ratios because Asia Wood employs a number of the same production processes as those used by the respondents, including, for example, cutting wood, sanding wood, glueing wood, and painting wood. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses, SG&A expenses as a percentage of the total cost of manufacturing, and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

We used the following sources to value truck and rail freight services provided to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. To value truck freight, we used the freight rates published in the Great Indian Bazaar at http://www.infobanc.com/logtruck.htm. We obtained distances between cities from the following website: http://www.mapsofindia.com. The value reflects freight rates in effect on September 25, 2004. We valued rail–freight services using the April 1995 rates published by the Indian Railway Conference Association. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR using the WPI published by the Reserve Bank of India.

For further discussion of the surrogate values we used for these preliminary results of review, see the *Memorandum From Paul Stolz Regarding Factors–of-Production Valuation for Preliminary Results* (December 30, 2004), which is on file in the CRU.

Use of Total Adverse Facts Available

Three producers/exporters named in the notice of initiation did not respond to the Department's questionnaire. The PRC- wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate. Companies that have not demonstrated their entitlement to a separate rate are appropriately considered to be part of the PRC–wide entity. Therefore, we determine it is necessary to review the PRC–wide entity because it did not provide information necessary to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority. Because the PRC–wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (SAA) accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997).

As above stated, the PRC–wide entity did not respond to our requests for information. Because the PRC–wide entity did not respond to our request for information in the form or manner requested, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC–wide entity. In addition, pursuant to section 776(b) of the Act, we find that the PRC–wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. As noted above, the PRC–wide entity failed to respond in the proper format or in a timely manner to the Department's questionnaire, despite repeated requests that it do so. Thus, because the PRC–wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC–wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review. An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the

record. See section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of the proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. Specifically, as adverse facts available, we have assigned to the PRC–entity 114.90 percent, which is the current PRC–wide rate.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' See the Statement of Administrative Action (SAA), H.R. Doc. 103–316 at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes at 869, however, that the Department need not prove that the selected facts available are the best alternative information.

In this review, we are using as adverse facts available the highest dumping margin from this or any prior segment of the proceeding, the current PRC–wide rate of 114.90 percent. This rate was calculated in the 1999 - 2000 administrative review of the order on certain cased pencils from the PRC. See *Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 59049 (September 19, 2002). Therefore, the PRC–wide rate of 114.90 percent constitutes secondary information within the meaning of the SAA. See SAA at 870. Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin if it was calculated from verified sales and cost data. The 114.90 percent PRC–wide rate is based on verified information provided by Kaiyuan Group Corporation in the 1999 - 2000 administrative review of the order on certain cased pencils from the PRC. This rate has not been invalidated judicially. Therefore, we consider this rate to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevance of the margin we have selected as adverse facts available. Moreover, the selected margin is the current PRC–wide rate and is currently applicable to exporters who do not have a separate rate. Thus, it is appropriate to use the selected rate as adverse facts available in the instant review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 2002, through November 30, 2003:

Manufacturer/exporter	Margin (percent)
Shandong Rongxin Import and Export Co., Ltd.	17.19
China First Pencil Company, Ltd./Shanghai Three Star Stationery Industry Corp.	6.48
Orient International Holding Shanghai Foreign Trade Co., Ltd.	24.66
PRC–Wide Rate	114.90

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations it performed for the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We have calculated customer–specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated these assessment amounts because there is no information on the record which identifies entered values or the importers of record. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment amounts, calculated as described above, on each of the applicable entries during the review period.

Cash Deposit Requirements

The following deposit requirements will apply to all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non–PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company–specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC–wide rate established in the final results of this review; and (4) the cash deposit rate for any non–PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 30, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–604 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 04–00004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to AmRus Ventures, Inc. (''AMRUS''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 400l-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2004).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**.Under Section 305 (a) of the Act and 15 CFR 325.ll(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

I. Export Trade

A. Products

All products.

B. Services

All services.

C. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

D. Export Trade Facilitation Services (as they Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

AMRUS may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

IV. Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, AMRUS will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.
2. AMRUS will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

V. Members

AMRUS has named no members (other than itself as Applicant) that are seeking protection under the Export Trade Certificate of Review.

VI. Definitions

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 6, 2005.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E5–88 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of invitation to energy industry event—Norwegian offshore opportunities forum.

DATE: March 3, 2005.

TIME: 8 a.m.

LOCATION: The Houstonian Hotel, Houston, Texas.

SUMMARY: As part of the U.S.-Norway Oil and Gas Industry Summit in Houston, the Royal Norwegian Ministry of Petroleum and Energy and the U.S. Department of Commerce are pleased to invite you, or a representative you designate from your company, to a breakfast briefing on opportunities on the Norwegian Continental Shelf (NCS). The briefing will provide offshore exploration and production companies with an overview of the resource potential and the framework conditions on the NCS.

Although Norway is the third largest oil exporter in the world, only about ¼ of the total estimated petroleum resources on the NCS have been produced. With the large quantities of petroleum that remain to be discovered, the NCS offers a variety of oil and gas opportunities in both established and frontier basins. Norway also has a well established and competitive petroleum industry, predictable and transparent framework conditions, and an approachable and skilled public administration.

8 a.m.—Breakfast.

8:15 a.m.—Welcome and Opening Remarks.

Ms. Thorild Widvey, Norwegian Minister of Petroleum and Energy Official from the U.S. Department of Commerce.

8:30 a.m.—The Resource Potential on the NCS.

Ms. Bente Nyland, Director, Norwegian Petroleum Directorate.

8:45 a.m.—The Framework Conditions on the NCS.

Mr. Gunnar Gjerde, Director General, Norwegian Ministry of Petroleum and Energy.

9:15 a.m.—Experiences of a U.S. Entrant to the NCS.

Steven B. Hinchman, Senior Vice President of Worldwide Production, Marathon Oil Corporation.

9:35 a.m.—Question and Answer Period.

9:55 a.m.—Closing Remarks.

Official from the U.S. Department of Commerce.

10 a.m.—Adjourn.

Please RSVP by February 18, 2005 to Patterson Brown, U.S. Department of Commerce, 202/482.4950, 202/482.0170 (fax), or *pbrown@ita.doc.gov;* or to Erik Just Olsen, Norwegian Ministry of Petroleum and Energy, +47 22 24 61 94 or *erik-just.olsen@oed.dep.no.*

Dated: January 6, 2004.

Patterson W. Brown,

International Trade Specialist, Office of Energy and Environmental Industries.

[FR Doc. E5–71 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 041217352–4352–01]

Announcing Development of Federal Information Processing Standard (FIPS) 140–3, a Revision of FIPS 140–2, Security Requirements for Cryptographic Modules

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology announces that it plans to develop Federal Information Processing Standard (FIPS) 140–3, which will supersede FIPS 140–2, Security Requirements for Cryptographic Modules. FIPS 140–2, approved by the Secretary of Commerce and announced in the **Federal Register** (June 27, 2001, Volume 66, Number 124, Pages 34154–34155), identifies requirements for four levels of security for cryptographic modules that are utilized by Federal agencies to protect the security of Federal information systems. The Federal Information Security Management Act (FISMA) (Public Law 107–347) requires that all Federal agencies and their contractors use only those cryptographic-based security systems that were validated to FIPS 140–2 or to its predecessor, FIPS 140–1.

DATES: Comments on new and revised requirements for FIPS 140–3 must be received on or before Febrary 28, 2005.

ADDRESSES: Comments may be sent electronically to *FIPS140–3@nist.gov,* or may be mailed to Information Technology Laboratory, ATTN: Development of FIPS 140–3, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930. All comments received will be available on the NIST Web site at: *http://csrc.nist.gov/cryptval/*

FOR FURTHER INFORMATION CONTACT: Mr. Allen Roginsky (301) 975–3603, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930. E-mail: *allen.roginsky@nist.gov.*

A copy of FIPS 140–2 is available electronically from the NIST Web site at: *http://csrc.nist.gov/publications/fips/index.html.*

SUPPLEMENTARY INFORMATION: FIPS 140–2, Security Requirements for Cryptographic Modules, superseded FIPS 140–1, which had been issued in 1994. FIPS 140–1 specified that the standard be reviewed within five years to consider its continued usefulness and to determine whether new or revised requirements should be added. NIST conducted a review of FIPS 140–1 in 1998–99, and the standard was reaffirmed as FIPS 140–2 in 2001 with technical modifications to address technological advances that had occurred since FIPS 140–1 had been issued.

FIPS 140–2 identifies requirements for four increasing, qualitative levels of security for cryptographic modules. The four security levels cover a wide range of potential applications and a wide spectrum of information types, including data with the potential to cause low, moderate and serious impacts on organizations should there be a loss of confidentiality, integrity or availability of the data. In 1995, NIST and the Communications Security Establishment (CSE) of the Government of Canada established the Cryptographic Module Validation Program (CMVP) to validate cryptographic modules to FIPS 140–1 and other cryptography-based standards. Nearly 500 cryptographic modules and many implementations of cryptographic algorithms have been tested by National Voluntary Laboratory Accreditation Program (NVLAP) accredited, independent third-party laboratories and have been validated. Products validated by this program are used in Canada, the U.S., and many other countries. Federal government agencies are required to acquire products that have been validated under the CMVP when they use cryptographic-based security systems to protect their information. The CMVP enables vendors of cryptographic products to use a common standard and a common testing

and validation process for their products.

NIST plans to develop FIPS 140–3 to meet the new and revised requirements of Federal agencies for cryptographic systems, and to address technological and economic changes that have occurred since the issuance of FIPS 140–2. As the first step in the development of FIPS 140–3, NIST invites comments from the public, users, the information technology industry, and Federal, State and local government organizations concerning the need for and recommendations for a new standard.

NIST is especially interested in comments on the following issues:

(1) Compatibility with industry standards.

(2) New technology areas.

(3) Introduction of additional levels of security.

(4) Additional requirements specific to physical security.

(5) Portability of applications (including operating systems) based on platform and/or environment.

Following its review of the comments submitted in response to this notice, NIST will hold open, public workshops in 2005 to discuss the development of FIPS 140–3. These workshops will be announced in the **Federal Register** with information about participation. NIST expects to propose FIPS 140–3 for public review and comment before recommending the standard to the Secretary of Commerce for approval in 2006.

NIST will develop a plan for a transition period for testing and validating modules to FIPS 140–3, and for agencies to develop plans to acquire products that are compliant with FIPS 140–3. The transition plan will also address the use by Federal agencies of cryptographic modules that have been validated for compliance to FIPS 140–1 and FIPS 140–2.

Authority: Federal Information Processing Standards (FIPS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Federal Information Security Management Act of 2002 (Public Law 107–347).

E.O. 12866: This notice has been determined not to be significant for the purposes of E.O. 12866.

Dated: January 5, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–545 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Biospace, Inc. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Teresa Bradshaw, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: (301) 975–2624 , fax (301) 869–2751, or e-mail: *teresa.bradshaw@nist.gov.* Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 01–015

Title: Applying X-ray Topography and Diffractometry to Improve Protein Crystal Growth.

Abstract: The present invention provides a general method and system for identifying conditions for growing protein crystals having greater order and fewer crystal defects that are suitable for use in determining the structure of the protein by x-ray diffractometry. Crystals of a protein are grown under different sets of predetermined conditions and x-ray topographic images of the protein crystals are generated. The x-ray topographic images reveal defects in the crystals and permit identification of the set(s) of conditions that produce crystals having the fewest crystal defects. In a preferred embodiment, the protein crystals are grown in a dynamically controlled crystallization system (DCCS). An important condition of crystal growth that can be optimized by the method is the effective gravity, g^{eff}, experienced by the growing crystal; for example, when the crystal is grown under microgravity in space, or in a powerful magnetic field that causes the protein molecules in the growing crystal to experience acceleration of an effective gravitational field that is greater or less than the actual gravitational field at the earth's surface. With the present method, it is possible to identify differences between crystals grown on the earth with the DCCS and those grown in space under identical conditions. A comparison of x-ray topographs taken from both earth grown and space grown crystals indicates that the space grown crystals are of higher crystallographic perfection.

Dated: January 5, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–544 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092704B]

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of California sea lions, Pacific harbor seals, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California.

DATES: This authorization is effective from January 3, 2005, until January 3, 2006.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315

East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, (301) 713–2289, ext 128, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On September 1, 2004, NMFS received a request from CALTRANS requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB or the Bay), California. An IHA was issued to CALTRANS for this activity on November 9, 2003, and expired on November 9, 2004. Background information on the issuance of this IHA was published in the **Federal Register** on November 14, 2003 (68 FR 64595). Minor modifications to the IHA were made on June 28, 2004 in response to a request by CALTRANS. These modifications were limited to clarifications of, and corrections on, the terminology and conditions in the IHA.

A detailed description of the SF-OBB project was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice and is not repeated here.

Comments and Responses

A notice of receipt and request for 30-day public comment on the application and proposed authorization was published on October 20, 2004 (69 FR 61652). During the 30-day public comment period, no comments were received on this action.

Description of the Marine Mammals Potentially Affected by the Activity

General information on the marine mammal species found in California waters can be found in Caretta et al. (2004), which is available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBB area are the California sea lion and Pacific harbor seal. From December through May gray whales may also be present in the SF-OBB area. Information on these 3 species was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice and is not repeated here.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Based on airborne noise levels measured and on-site monitoring conducted during 2004 under the current IHA, noise levels from the East Span project are not resulting in the harassment of harbor seals hauled out on Yerba Buena Island. Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to below harassment levels by the time they reach that haul-out site, 5.7 kilometers (3.5 miles) from the project site.

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' June 2004 annual monitoring report, the East Span Project is resulting in only small numbers of pinnipeds being harassed (through June 2004, the biological observers indicated that no pinnipeds had been harassed as a result of East Span construction) and, therefore, is not expected to result in more than a negligible impact on marine mammal stocks and will not have a significant impact on their habitat. Short-term impacts to habitat may include minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Mitigation

The following mitigation measures are currently required under the IHA to reduce impacts to marine mammals to the lowest extent practicable. NMFS is requiring these mitigation measures to be carried out under the new IHA.

Barrier Systems

An air bubble curtain system is required to be used only when driving the permanent open-water piles. While the bubble curtain is required specifically as a method to reduce impacts to endangered and threatened fish species in SFB, it may also provide some benefit for marine mammals. The NMFS' Biological Opinion and the California Department of Fish and

Game's (CDFG) 2081 Incidental Take Permit also allow for the use of other equally effective methods, such as cofferdams, as an alternative to the air bubble curtain system to attenuate the effects of sound pressure waves on fish during driving of permanent in-Bay piles (NMFS 2001; CDFG, 2001). Piers E–16 through E–7 for both the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams, which will be de-watered before the start of pile driving. De-watered cofferdams are generally effective sound attenuation devices. For Piers E3 through E6 of the Skyway and Piers 1 and E2 of the Self-Anchored Suspension span, it is anticipated that cofferdams will not be used: therefore, a bubble curtain will surround the piles.

Sound Attenuation

As a result of the determinations made during the Pile Installation Demonstration Project (PIDP) restrike and the investigation at the Benicia-Martinez Bridge, NMFS determined in 2003 that CALTRANS must install an air bubble curtain for pile driving for the open-water piles without cofferdams located at the SF-OBB. This air bubble curtain system consists of concentric layers of perforated aeration pipes stacked vertically and spaced no more than five vertical meters apart in all tide conditions. The minimum number of layers must be in accordance with water depth at the subject pile: 0-<5 m = 2 layers (1263 cfm); 5-<10 m = 4 layers (2526 cfm), 10-<15 m = 7 layers (4420 cfm); 15-<20 m = 10 layers (6314 cfm); 20-<25 m= 13 layers (8208 cfm). The lowest layer of perforated aeration pipes must be designed to ensure contact at all times and tidal conditions with the mudline without sinking into the bay mud. Pipes in any layer must be arranged in a geometric pattern, which will allow for the pile driving operation to be completely enclosed by bubbles for the full depth of the water column.

To provide a uniform bubble flux, each aeration pipe must have four adjacent rows of air holes along the pipe. Air holes must be 1.6–mm diameter and spaced approximately 20 mm apart. The bubble curtain system will provide a bubble flux of at least two cubic meters per minute, per linear meter of pipeline in each layer. Air holes must be placed in 4 adjacent rows.

The air bubble curtain system must be composed of the following: (1) an air compressor(s), (2) supply lines to deliver the air, (3) distribution manifolds or headers, (4) perforated aeration pipes, and (5) a frame. The frame facilitates transport and placement of the system, keeps the aeration pipes stable, and provides ballast to counteract the buoyancy of the aeration pipes in operation. Meters are required to monitor the operation of the bubble curtain system. Pressure meters will be installed and monitored at all inlets to aeration pipelines and at points of lowest pressure in each branch of the aeration pipeline. If the pressure or flow rate in any meter falls below 90 percent of its operating value, the contractor will cease pile driving operations until the problem is corrected and the system is tested to the satisfaction of the CALTRANS resident engineer.

Establishment of Safety/Buffer Zones

A safety zone is to be established and monitored to include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 mPa RMS (impulse) for pinnipeds. Also, a 180–dB re 1 mPa RMS (impulse) safety zone for gray whales must be established for pile driving occurring during the gray whale migration season from December through May. Prior to commencement of any pile driving, a preliminary 500–m (1,640–ft) radius safety zone for pinnipeds (California sea lions and Pacific harbor seals) will be established around the pile driving site, as it was for the PIDP. Once pile driving begins, either new safety zones can be established for the 500 kJ and 1700 kJ hammers or the 500 m (1,640 ft) safety zone can be retained. If new safety zones are established based on SPL measurements, NMFS requires that each new safety zone be based on the most conservative measurement (i.e., the largest safety zone configuration). SPLs will be recorded at the 500–m (1,640–ft) contour. The safety zone radius for pinnipeds will then be enlarged or reduced, depending on the actual recorded SPLs.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait at least 15 minutes, and if no marine mammals are seen by the observer in that time it may be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in SFB dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals or sea lions enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

Although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain and marine mammal observers monitoring a 190–dB safety zone for pinipeds and 180–dB safety zone for gray whales, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS will also ''soft start'' the hammer prior to operating at full capacity. CALTRANS typically implements a ''soft start'' with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1- minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor will initiate hammering of both the 500–kJ and the 1,700–kJ hammers with this procedure in order to allow pinnipeds in the area to voluntarily move from the area which should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that

any pinnipeds that are missed during safety zone monitoring will not be injured.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, and gray whales, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

Monitoring

Since the start of the large-diameter pile driving in the Bay nearly two years ago, CALTRANS has completed pile driving of 105 piles inside cofferdams and 39 piles in open water (with the use of a bubble curtain) for a total of 144 piles. Monitoring teams were on-site for all open water pile driving and during driving of ''tops'' (last section of the piles, which drives the pile deeper into the substrate) inside cofferdams where underwater SPLs reached 190 dB or greater. During 76 days of monitoring, both within and outside the marine mammal safety zone, a single startle behavior from a California sea lion was observed.

The following monitoring measures are required under the IHA to reduce impacts to marine mammals to the lowest extent practicable.

Visual Oservations

The area-wide baseline monitoring and the aerial photo survey to estimate the fraction of pinnipeds that might be missed by visual monitoring have been completed under the current IHA and do not need to be continued.

Safety zone monitoring will be conducted during driving of all open-water, permanent piles without cofferdams and with cofferdams when underwater SPLs reach 190 dB RMS or greater. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team will be required for the safety zones around each pile driving site, so that multiple teams will be required if pile driving is occurring at multiple locations at the same time. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Observers will most likely conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) is not practical. Pile driving will not begin until the safety zone is clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation). Monitoring will continue through the pile driving period and will end approximately 30 minutes after pile driving has been completed. When necessary, biological observations will be made using binoculars during daylight hours.

In addition to monitoring from boats, during open-water pile driving, monitoring at one control site (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e., Mowry Slough) will be designated and monitored for comparison. Monitoring will be conducted twice a week at the control site whenever open-water pile driving is being conducted. Data on all observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seals re-haul after a flush.

Acoustical Observations

Airborne noise level measurements have been completed and underwater environmental noise levels will continue to be measured as part of the East Span Project. The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for gray whales. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given open-water pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions (either west, east, south or north) of the pile driving site and at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder. Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa RMS (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Reporting

Under the previous IHA, CALTRANS submitted weekly marine mammal monitoring reports and in June, 2004, CALTRANS submitted its Marine Mammal and Acoustic Monitoring for the Eastbound Structure. This annual report is available by contacting NMFS (see **ADDRESSES**) or on the Web at *http://biomitigation.org*.

Under the 2005 IHA, coordination with NMFS will occur on a weekly basis, or more often as necessary. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at *http://biomitigation.org*. These weekly reports will include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS will provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the

westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft final report will be considered to be the final report.

National Environmental Policy Act (NEPA)

In November, 2003, NMFS prepared an Environmental Assessment (EA) and, on November 4, 2003 made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. The finding contained in the Biological Opinion was that the CALTRANS action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected. The issuance of this IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. However, as the effects of the underlying activities on listed salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA for this activity does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

Determinations

For the reasons discussed in this document and in previously identified supporting documents, NMFS has determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Authorization

For the reasons previously discussed, NMFS has issued an IHA for a 1-year period, for the potential incidental harassment of small numbers of harbor seals, California sea lions and California gray whales incidental to construction of a replacement bridge for the East Span of the San Franciso-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has determined that the construction activity would result in the harassment of only small numbers of harbor seals, California sea lions and possibly California gray whales and will have no more than a negligible impact on these marine mammal stocks.

Dated: January 3, 2005.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–624 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Performance Reporting System (PRS) for the Technology Opportunities Program (TOP)

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 14, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *cbeck@ntia.doc.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Technology Opportunities Program (TOP), is to promote the use of advanced telecommunications and information technologies in the non-profit and public sectors. These projects encourage the deployment of broadband infrastructure, services, and applications throughout the Nation. TOP projects demonstrate how digital networks support lifelong learning for all Americans, help public safety officials protect the public, assist in the delivery of health care and public health services, and foster communication, resource-sharing, and economic development.

Since 1994, the National Telecommunications and Information Administration (NTIA), in administering TOP, has awarded 610 grants, in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands totaling $233.5 million and leveraging $313.7 million in local

matching funds. TOP makes matching grants to state, local and tribal governments, non-profit health care providers, schools, libraries, public safety providers, and non-profit community-based, faith-based organizations, national organizations and associations, museums, colleges, universities, or other providers of social services.

In order to ensure TOP's ability to assess the performance of its grants program and to comply with the Government Performance and Results Act, NTIA will collect and analyze quantitative and qualitative data relating to start-up documentation, quarterly and annual progress, and close-out documentation on TOP-funded projects.

NTIA seeks a mechanism whereby it can evaluate the impacts of its projects on an ongoing basis, monitor grants more efficiently and effectively, and provide timely technical assistance to grant recipients. To enable the Program to monitor and to analyze the impacts of the funded projects, TOP seeks to incorporate standardized quantitative and qualitative data elements into an online structured reporting system. The reporting system will include a set of core data elements that apply to all projects.

NTIA is interested in the effects that the funded projects are having at the local level and, over the long term, at the national level. It is NTIA's intention to understand the nature and degree of those effects on the organizations implementing the projects, other organizations that are involved with the projects, the individuals who are served by the projects, and the community as a whole.

II. Method of Collection

Data will be collected through the use of automated collection techniques. The information collection instrument to be used for this study will include a web-based structured reporting system for both quantitative and qualitative project information.

III. Data

OMB Number: 0660–0015.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local government, and non-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 20 hours for start-up documentation; 4 hours for progress reports; 30 minutes for annual report; and 20 hours for final closeout report.

Estimated Total Annual Respondent Burden Hours: 1,492.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request of OMB approval of the information collection; they also become a matter of public record.

Dated: January 6, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–563 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

January 10, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection retroactively increasing 2004 limits by 4%.

EFFECTIVE DATE: January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In recognition of the continuing efforts of Cambodia to improve working conditions in the textile and apparel sector, including internationally recognized core labor standards, through the application of Cambodian labor law, and in response to the Second Labor Consultation of 2004, the U.S. Government is providing an increase of 4% of the base level quotas retroactively to 2004 adjusted limits. Goods exported on and after January 1, 2005 are not subject to textile and apparel import limits.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to adjust the 2004 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68597, published on December 9, 2003 and 69 FR 60617, published on October 12, 2004.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 10, 2005.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: You are directed, effective on January 12, 2005, to increase the restraint limits established in the directive dated December 4, 2003 for textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2004 and extended through December 31, 2004, to reflect the continuing efforts of the Royal Government of Cambodia to improve working conditions in the textile and apparel sector, and in response to the Second Labor Consultation of 2004:

Category	adjusted twelve-month limit [1]
331pt./631pt. [2]	59,451 dozen pairs.
334/634	283,264 dozen.
335/635	108,217 dozen.
338/339	4,453,537 dozen.
340/640	1,318,876 dozen.
345	137,807 dozen.
347/348/647/648	4,767,375 dozen.
352/652	1,065,411 dozen.
435	26,594 dozen.
438	127,771 dozen.
445/446	156,164 dozen.
638/639	1,631,308 dozen.

Category	adjusted twelve-month limit [1]
645/646	351,629 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–720 Filed 1–11–05; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent (NOI) To Prepare a Supplement to the Final Environmental Impact Statement (EIS) for the Realistic Bomber Training Initiative (RBTI)

AGENCY: United States Air Force; Federal Aviation Administration.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental. Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500–1508), and Air Force's Environmental Impact Analysis Process (EIAP) as implemented by 32 CFR part 989, the United States Air Force (Air Force) is issuing this notice to advise the public of our preparation of a supplement to the Realistic Bomber Training Initiative (RBTI) Final Environmental Impact Statement (EIS) to address two issues as directed by the October 12, 2004 decision of the United States Court of Appeals for the Fifth Circuit. The supplement will address the effects of wake vortices on ground structures associated with RBTI aircraft training. The supplement will also address the effects of RBTI on civil and commercial aviation; including the documentation of changes from the draft EIS to the final EIS made as a result of previously received FAA comments.

Information: The Air Force intends to release the draft supplement in spring 2005. Two public hearings will be held in the affected area during the 45-day public and agency review period. Dates, locations and times for the public hearings will be announced in the local media.

Point of Contact: Written comments or requests for information should be directed to: Ms. Brenda W. Cook, HQ ACC/CEVP, 129 Andrews St., Ste. 102, Langley AFB, VA 23665–2769, Phone: (757) 764–9339.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–616 Filed 1–11–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, 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 February 11, 2005.

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, Information Management Case Services Team, Regulatory Information Management Services, 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: January 6, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: FRSS on Foods and Physical Activity in Public Elementary Schools: 2005.

Frequency: On occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 10,518.

Burden Hours: 7,889.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. This survey will go to 1,200 elementary schools to learn about the availability of foods outside of full school meals in elementary schools and to learn about the opportunities for physical activity through physical education and other breaks offered in elementary schools.

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 2662. 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 Kathy Axt at her

e-mail address *Kathy.Axt@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. E5–86 Filed 1–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, 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 March 14, 2005.

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, Information Management Case Services Team, Regulatory Information Management Services, 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: January 6, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Child Care Access Means Parents In School Program—18 Month/36-Month Reports.

Frequency: 18 and 36 months.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 341.

Burden Hours: 2,378.

Abstract: The Child Care Access Means Parents In School Program provides grants to institutions of higher education to enable institutions to provide child care to low-income students. Grantees are required to file reports 18 months after they first receive funding. The reports are used to evaluate grantees' performance.

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 2657. 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 Joseph Schubart at his e-mail address *Joe.Schubart@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. E5–87 Filed 1–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Overview Information—College Assistance Migrant Program (CAMP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.149A.

Dates:

Applications Available: January 12, 2005.

Deadline for Transmittal of Applications: March 14, 2005.

Deadline for Intergovernmental Review: May 12, 2005.

Eligible Applicants: Institutions of higher education (IHEs) or private non-profit organizations (such as faith-based organizations) that plan the project in cooperation with an IHE and prepare to operate some aspects of the project with the facilities of the IHE.

Estimated Available Funds: $3,000,000.

Estimated Range of Awards: $150,000–$425,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the College Assistance Migrant Program (CAMP) is to provide the academic and financial support necessary to help migrant and seasonal farmworkers and their children successfully complete their first year of college.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from section 75.225(a) of the Education Department General Administrative Regulations (EDGAR).

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application meeting this competitive preference priority.

This priority is: *Novice Applicant.*

The applicant must be a ''novice applicant'' as defined in 34 CFR 75.225(a).

Program Authority: 20 U.S.C. 1070d–2.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99; (b) 34 CFR part 206; (c) the definitions of a migratory agricultural worker in 34 CFR part

200.81; and (d) 20 CFR parts 669.110 and 669.320.

Note: The regulations in 34 CFR part 86 apply to Institutions of Higher Education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,000,000.

Estimated Range of Awards: $150,000–$425,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or private non-profit organizations (such as faith-based organizations) that plan the project in cooperation with an IHE and prepare to operate some aspects of the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Mary L. Suazo, U.S. Department of Education, Office of Migrant Education, 400 Maryland Ave., SW., room 3E227, Washington, DC 20202–6135. Telephone: (202) 260–1396 or by e-mail: *mary.suazo@ed.gov.*

The application package also can be obtained electronically at the following address: *http://www.ed.gov/programs/camp/applicant.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) or by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III of the application to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative (Part III), including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Appendices must be limited to 15 pages and may include the following: resumes, job descriptions, letters of support, bibliography, and information on prior experience if relevant.

The page limits described in this notice do not apply to the following sections of the application: Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: January 12, 2005.

Deadline for Transmittal of Applications: March 14, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 12, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an

identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The applicant's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an electronic application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an email will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: CFDA Number 84.149A,
400 Maryland Avenue, SW.,
Washington, DC 20202–4260;
or
By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center—Stop 4260, Attention: CFDA Number 84.149A, 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
3. A dated shipping label, invoice, or receipt from a commercial carrier; or
4. Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or
2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must hand deliver the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.149A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.
2. The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgement within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application are prior experience. Applicants that are currently administering a HEP project that is in the final year of the five-year grant cycle and applicants whose five-year grant cycle ended in FY 2004 are eligible to receive up to 15 points for prior experience in accordance with Section 418A(e)of the Higher Education Act of 1965, as amended.

The Secretary will award points for prior experience based on information contained in documents such as annual performance reports, project evaluation reports, site visit reports, and the previously approved application.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. *Reporting*: At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures*: Under the Government Performance and Results Act (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of CAMP: (1) The number and percent of CAMP participants who successfully complete the first year of college, and (2) the number and percent of CAMP participants who, after completing their first year of college, continue to be enrolled in postsecondary education.

All grantees will be required to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mary L. Suazo, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E227, Washington, DC 20202–6135. Telephone Number: (202) 260–1396, or by e-mail: *mary.suazo@ed.gov.*

The application package also can be obtained electronically at the following address: *http://www.ed.gov/programs/camp/applicant.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 7, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–633 Filed 1–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Overview Information; High School Equivalency Program (HEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.141A.

Dates: Applications Available: January 12, 2005.

Deadline for Transmittal of Applications: March 14, 2005.

Deadline for Intergovernmental Review: May 12, 2005.

Eligible Applicants: Institutions of higher education (IHEs) or private non-profit organizations (such as faith-based organizations) that plan the project in cooperation with an IHE and prepare to operate some aspects of the project with the facilities of the IHE.

Estimated Available Funds: $5,920,000.

Estimated Range of Awards: $150,000–$475,000.

Estimated Average Size of Awards: $370,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the High School Equivalency Program (HEP) is to help migrant and seasonal farmworkers and their children obtain a general education diploma (GED) that meets the guidelines for high school equivalency established by the State in which the HEP project is conducted, and to gain employment or be placed in an IHE or other postsecondary education or training.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from section 75.225(a) of the Education Department General Administrative Regulations (EDGAR).

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application meeting this competitive preference priority.

This priority is: *Novice Applicant*

The applicant must be a ''novice applicant'' as defined in 34 CFR 75.225(a).

Program Authority: 20 U.S.C. 1070d–2.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99; (b) 34 CFR part 206; (c) the definitions of a migratory agricultural worker in 34 CFR part 200.81; and (d) 20 CFR parts 669.110 and 669.320.

Note: The regulations in 34 CFR part 86 apply to Institutions of Higher Education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,920,000.

Estimated Range of Awards: $150,000–$475,000.

Estimated Average Size of Awards: $370,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or private non-profit organizations (such as faith-based organizations) that plan the project in cooperation with an IHE and prepare to operate some aspects of the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Mary L. Suazo, U.S. Department of Education, Office of Migrant Education, 400 Maryland Ave., SW., room 3E227, Washington, DC 20202–6135. Telephone: (202) 260–1396 or by e-mail: *mary.suazo@ed.gov.*

The application package also can be obtained electronically at the following address: *http://www.ed.gov/programs/hep/applicant.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille,

large print, audiotape, or computer diskette) or by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III of the application to the equivalent of no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative (Part III), including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Appendices must be limited to 15 pages and may include the following: resumes, job descriptions, letters of support, bibliography, and information on prior experience if relevant.

The page limits described in this notice do not apply to the following sections of the application: Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

• Exceed the page limit if you apply these standards; or

• Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: January 12, 2005.

Deadline for Transmittal of Applications: March 14, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 12, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an electronic application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION**

CONTACT (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.141A, 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA Number 84.141A, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
3. A dated shipping label, invoice, or receipt from a commercial carrier; or
4. Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or
2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must hand deliver the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.141A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.
2. The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgement within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application are prior experience. Applicants that are currently administering a HEP project that is in the final year of the five-year grant cycle and applicants whose five-year grant cycle ended in FY 2004 are eligible to receive up to 15 points for prior experience in accordance with Section 418A(e) of the Higher Education Act of 1965, as amended.

The Secretary will award points for prior experience based on information contained in documents such as annual performance reports, project evaluation reports, site visit reports, and the previously approved application.

VI. Award Admininstration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of HEP: (1) the number and percent of HEP participants who complete the course of study and receive a GED, and (2) the number and percent of HEP participants with a GED who enter postsecondary education programs, career positions, or the military.

All grantees will be required to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mary L. Suazo, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E227, Washington, DC 20202–6135. Telephone Number: (202) 260–1396, or by e-mail: *mary.suazo@ed.gov.*

The application package also can be obtained electronically at the following address: *http://www.ed.gov/programs/hep/applicant.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 7, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–634 Filed 1–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–2495–020, ER96–2495–021, ER96–2495–022, ER96–2495–023, ER97–4143–008, ER97–4143–009, ER97–4143–010, ER97–4143–011, ER97–1238–015, ER97–1238–016, ER97–1238–017, ER97–1238–018, ER98–2075–014, ER98–2075–015, ER98–2075–016, ER98–2075–017, ER98–542–010, ER98–542–011, ER98–542–012, ER98–542–013, EL04–131–000 (Not consolidated)]

AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., Central and South West Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

December 28, 2004.

On August 9, 2004, as amended on August 10, 2004, September 16, 2004 and November 19, 2004, the American Electric Power Service Corporation, on behalf of AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc. (collectively, AEP) submitted for filing generator power market screens in compliance with the Commission's orders issued April 14, 2004, and July 8, 2004.

On December 17, 2004, the Commission issued an order addressing these filings in Docket Nos. ER96–2495–020, *et al.* (not consolidated). The Commission's order institutes a proceeding in Docket No. EL04–131–000 under section 206 of the Federal Power Act with respect to the justness and reasonableness of AEP's market-based rates.

The refund effective date in Docket No. EL04–131–000, 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. E5–85 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–48–000]

Calpine Bethpage 3, LLC; Notice of Issuance of Order

January 5, 2005.

Calpine Bethpage 3, LLC (Calpine Bethpage) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy and capacity at market-based rates. Calpine Bethpage also requested waiver of various Commission regulations. In particular, Calpine Bethpage requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Calpine Bethpage.

On January 3, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Calpine Bethpage should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is February 2, 2005.

Absent a request to be heard in opposition by the deadline above, Calpine Bethpage is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Calpine Bethpage, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Calpine Bethpage's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–110 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–140–000]

Columbia Gas Transmission Corporation; Notice of Revenue Credit Report

January 5, 2005.

Take notice that on December 30, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing a penalty revenue crediting report pursuant to section 19.6 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1.

Columbia states that it is providing the attached penalty revenue crediting report for the 2003–2004 contract year.

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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–78 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–141–000]

Crossroads Pipeline Company; Notice of Revenue Credit Report

January 5, 2005.

Take notice that on December 30, 2004, Crossroads Pipeline Company (Crossroads) its Penalty Revenue Crediting Report pursuant to section 19.6 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, First Revised Volume No. 1. Crossroads states that it is providing the attached Penalty Revenue Crediting Report for the 2003–2004 contract year.

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.

Protest Date: 5 p.m., eastern time on January 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–79 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–80–001]

Eastern Shore Natural Gas Company; Notice Of Application

January 6, 2005.

Take notice that on December 22, 2004, Eastern Shore Natural Gas Company, (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No. CP03–80–001 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to amend the certificate issued in Docket No. CP03–80–000 by a Commission order dated October 8, 2003. Eastern Shore explains that its instant application seeks to modify its proposal to construct and operate certain pipeline facilities in Delaware and Pennsylvania in order to provide additional firm transportation capacity on its system. Eastern Shore states that its customers have re-evaluated their needs for the winter of 2005 and have determined that they will need an additional 7,450 Dth per day of capacity on Eastern Shore's system above that previously contracted for. Therefore, Eastern Shore requests authority to construct and operate 20.98 miles of pipeline looping and extensions on its system. This filing may be viewed on the Commission's Web site at *http://www.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, call (202) 208–1659.

Any questions regarding the application may be directed to Eric M. Pearson, Manager of Engineering, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904, at (302) 734–6710, ext. 6506.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, 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 385.211 and 385.214) 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. Comments and protests 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 website under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Comment Date: January 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–104 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–143–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2005.

Take notice that on December 30, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective February 1, 2005:

Fourth Revised Sheet No. 51,
First Revised Sheet No. 57C,
Seventh Revised Sheet No. 84,
Second Revised Sheet No. 86.

Great Lakes states that these tariff sheets are being filed to clarify that Great Lakes may offer a variable MDQ service option under its firm and limited firm transportation services on a not unduly discriminatory basis. Great Lakes states that none of the proposed changes will affect any of Great Lakes' currently effective rates and charges.

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. E5–81 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1221–000]

Mankato Energy Center, LLC; Notice of Issuance of Order

January 5, 2005.

Mankato Energy Center, LLC (Mankato) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy, capacity, and ancillary services at market-based rates. Mankato also requested waiver of various Commission regulations. In particular, Mankato requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mankato.

On December 30, 2004, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mankato should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Mankato Energy Center, LLC, 109 FERC 61,381 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is January 31, 2005.

Absent a request to be heard in opposition by the deadline above, Mankato is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mankato, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be

adversely affected by continued approval of Mankato's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–108 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–1137–000, ER04–1137–001 and ER04–1137–002]

MeadWestvaco Energy Services, L.L.C.; Notice of Issuance of Order

January 5, 2005.

MeadWestvaco Energy Services, L.L.C. (MWES) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy, capacity, and ancillary services at market-based rates. MWES also requested waiver of various Commission regulations. In particular, MWES requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MWES.

On December 20, 2004, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MWES should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). MeadWestvaco Energy Services, L.L.C., 109 FERC 61,290 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is January 19, 2005.

Absent a request to be heard in opposition by the deadline above, MWES is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MWES, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MWES's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instruction on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–107 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–139–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2005.

Take notice that on December 30, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing an Agreement, and as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 273 tariff sheets, with an effective date of December 31, 2004.

Midwestern states the Agreement is being submitted for the Commission's review and information and has been listed on the appropriate tariff sheet as a non-conforming agreement. Midwestern also states that minor housekeeping change also was made to reflect a change in the name of the operator of Midwestern.

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. E5–77 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2207]

Mosinee Paper Corporation; Notice of Authorization for Continued Project Operation

January 6, 2005.

On December 18, 2002, Mosinee Paper Corporation, licensee for the Mosinee Project No. 2207, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2207 is located on the Wisconsin River in Marathon County, Wisconsin.

The license for Project No. 2207 was issued for a period ending December 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2207 is issued to Mosinee Paper Corporation for a period effective January 1, 2005 through December 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Mosinee Paper Corporation is authorized to continue operation of the Mosinee Project No. 2207 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–100 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–144–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 5, 2005.

Take notice that on December 30, 2004, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Seventy Second Revised Sheet No. 9, to become effective January 1, 2005.

National states that Article II, Sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. National further states that section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. National indicates that the recalculation produced an IG rate of $0.76 per dth. In addition, National explains that Article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

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. E5–76 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–433–000, ER04–433–001, ER4–432–000, ER04–432–001]

New England Power Pool; Bangor Hydro-Electric Company, et al.; Notice of Extension of Time

January 5, 2005.

On December 8, 2004, ISO New England Inc. (ISO) filed a motion for an extension of time to file the intra-zone deliverability compliance filing required by the Commission's order issued November 8, 2004, in the above-docketed proceeding. 109 FERC ¶ 61,155 (2004). In the motion, the ISO requests that the compliance filing date be extended to allow New England Power Pool stakeholders to reach a consensus concerning a workable methodology for determining eligibility for locational installed capacity payments.

Upon consideration, notice is hereby given that an extension of time for filing the intra-zone deliverability compliance

filing is granted to and including July 1, 2006, as requested by the ISO.

Magalie R. Salas,

Secretary.

[FR Doc. E5–109 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–142–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2005.

Take notice that on December 30, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective February 1, 2005:

Second Revised Sheet No. 370,
Seventh Revised Sheet No. 371,
Fourth Revised Sheet No. 372.

Northwest states that the purpose of this filing is to change the name of the shipper for 26 service agreements listed as non-conforming service agreements in Northwest's tariff due to the permanent release of these service agreements.

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. E5–80 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–138–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

January 5, 2005.

Take notice that on December 23, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance five Rate Schedule TF–1 service agreements. Northwest also tendered the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective January 23, 2005:

First Revised Sheet No. 374,
Seventh Revised Sheet No. 377,
Fourth Revised Sheet No. 378.

Northwest states that the purpose of this filing is to: (1) Submit a nonconforming negotiated rate service agreement and four other non-conforming service agreements for Commission acceptance for filing; and (2) submit tariff sheets listing these agreements in Northwest's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. E5–82 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2005]

Oakdale Irrigation District, South San Joaquin Irrigation District; Notice of Authorization for Continued Project Operation

January 6, 2005.

On December 23, 2002, Oakdale and South San Joaquin Irrigation Districts, licensees for the Beardsley/Donnells Project No. 2005, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2005 is located on the Middle Fork of the Stanislaus River in Tuolumne County, California.

The license for Project No. 2005 was issued for a period ending December 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year

an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensees of such project have filed an application for a subsequent license, the licensees may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on their application. If the licensees of such a project have not filed an application for a subsequent license, then they may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2005 is issued to Oakdale and South San Joaquin Irrigation Districts for a period effective January 1, 2005, through December 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Oakdale and South San Joaquin Irrigation Districts are authorized to continue operation of the Beardsley/Donnells Project No. 2005 until such time as the Commission acts on their application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–95 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2067]

Oakdale Irrigation District, South San Joaquin Irrigation District; Notice of Authorization for Continued Project Operation

January 6, 2005.

On December 23, 2002, Oakdale and South San Joaquin Irrigation Districts, licensees for the Tulloch Project No. 2067, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2067 is located on the Stanislaus River in Tuolumne and Calaveras Counties, California.

The license for Project No. 2067 was issued for a period ending December 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensees of such project have filed an application for a subsequent license, the licensees may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on their application. If the licensees of such a project have not filed an application for a subsequent license, then they may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2067 is issued to Oakdale and South San Joaquin Irrigation Districts for a period effective January 1, 2005 through December 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Oakdale and South San Joaquin Irrigation Districts are authorized to continue operation of the Tulloch Project No. 2067 until such time as the Commission acts on their application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–96 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2118]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

January 6, 2005.

On December 26, 2002, Pacific Gas and Electric Company, licensee for the Donnells-Curtis Transmission Line Project No. 2118, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2118 is located in Tuolumne County, California.

The license for Project No. 2118 was issued for a period ending December 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the

Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2118 is issued to Pacific Gas and Electric Company for a period effective January 1, 2005, through December 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Donnells-Curtis Transmission Line Project No. 2118 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–97 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2130]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

January 6, 2005.

On December 26, 2002, Pacific Gas and Electric Company, licensee for the Spring Gap-Stanislaus Project No. 2130, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2130 is located on the South and Middle Forks of the Stanislaus River in Calaveras and Tuolumne Counties, California.

The license for Project No. 2130 was issued for a period ending December 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2130 is issued to Pacific Gas and Electric Company for a period effective January 1, 2005 through December 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Spring Gap-Stanislaus Project No. 2130 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–98 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2233]

Portland General Electric Company; Notice of Authorization for Continued Project Operation

January 6, 2005.

On December 27, 2002, Portland General Electric Company and Blue Heron Paper Company, licensees for the Willamette Falls Project No. 2233, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. On November 17, 2003, the Commission issued an order approving the transfer of the project license from Portland General Electric Company and Blue Heron Paper Company to Portland General Electric Company effective August 15, 2003. Project No. 2233 is located on the Willamette River in Oregon City and West Linn, Oregon.

The license for Project No. 2233 was issued for a period ending December 31, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2233 is issued to Portland General Electric Company for a period effective January 1, 2005, through December 31, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Portland General Electric Company is authorized to continue operation of the Willamette Falls Project No. 2233 until such time as the Commission acts

on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–101 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2149–119]

Public Utility District No. 1 of Douglas County; Notice of Settlement Agreement and Application for Approval of Contract for the Sale of Power for a Period Extending Beyond the Term of the License, and Soliciting Comments

January 5, 2005.

Take notice that on November 23, 2004, Public Utility District No. 1 of Douglas County, Washington (Douglas PUD), the Confederated Tribes of the Colville Reservation (Tribe), and the Wells Power Purchasers (Puget Sound Energy, Inc., Portland General Electric Company, PacificCorp, and Avista Corporation, collectively) filed with the Commission: (1) A request for approval of a settlement agreement between Douglas PUD and the Tribe resolving all claims involving annual charges under Section 10(e) of the Federal Power Act (FPA), 16 U.S.C. 803(e), for use of Indian land for Douglas PUD's Wells Project No. 2149; and (2) an application for approval of a contract for the sale of power from the project extending beyond the term of the project license, which expires on May 31, 2012. The project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington.

Under the settlement agreement Douglas PUD and the Tribe agree to a lump-sum payment to the Tribe, in the form of cash and real property and a share in the power output of project in fulfillment of all annual charge obligations to the Tribe for the term of the current license and any new license for the Wells Project issued to Douglas PUD. The settlement agreement by its terms would terminate if Douglas PUD is not granted a new license for the project. Both parties assert that the settlement is fair and serves the public interest by satisfying the purposes of section 10(e) of the FPA without the necessity of time-consuming and costly litigation over annual charge claims.

Section 22 of the FPA, 16 U.S.C. 815, provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service Commission or other similar authority in the state in which the sale or delivery of power is made. Douglas PUD and the Tribe have pursuant to the settlement agreement submitted for Commission approval a power sales contract providing the Tribe a share of the project's output that would extend beyond the term of the current project license. The tribe would acquire 4.5 percent of the output of the project through 2018 and 5.5 percent thereafter for as long as Douglas PUD holds any license for the Wells Project. The power would be bought by the Tribe at cost. The parties assert that approval of the submitted contract is in the public interest because the contract is part of the global settlement of issues addressed by the settlement and because of the special relationship of the Tribe to the Wells Project as result of the geographic proximity of the Tribe's reservation to the project.

Comments on the settlement agreement and the request for approval of the power sales contract or motions to intervene may be filed with the Commission no later than January 19, 2005, and replies to comments no later than January 25, 2005. The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

All documents (an original and eight copies) must be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please put the project name ''Wells Project No. 2149'' on the first page of all documents.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

A copy of the settlement agreement is available for review in the Commission's Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this project or other pending projects. For assistance, contact FERC Online Support.

Comment Date: January 19, 2005.

Replies to Comments: January 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–84 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–91–004]

Questar Pipeline Company; Notice of Revenue Credit Report

January 5, 2005.

Take notice that on December 27, 2004, Questar Pipeline Company (Questar) tendered for filing a liquids revenue crediting report. Questar states that the report documents the revenues and costs pertaining to the Kastler Plant for the time period August 2001 through October 31 2004.

Questar states that it is filing the report pursuant to a November 26, 2004 Commission order following technical conference and on rehearing. Questar explains that the Order requires Questar to provide an accounting of all revenues received from the sale of liquids at the Kastler Plant, and to credit these past revenues to transmission customers within 30 days of the Commission 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 on or before the date as indicated below. 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.

Protest Date: 5 p.m. eastern time on January 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–105 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–40–000, CP05–41–000]

Rendezvous Gas Services, L.L.C.; Notice of Application

January 5, 2005.

Take notice that on December 27, 2004, Rendezvous Gas Services, L.L.C. (Rendezvous), 1050 17th Street, Suite 500, Denver, Colorado 80265, filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations requesting: (1) A limited-jurisdiction certificate of public convenience and necessity authorizing Rendezvous (a) to construct and operate a 20.8-mile, 20-inch pipeline, providing a direct connection between a gas processing plant in Uinta County, Wyoming and Kern River Gas Transmission Company in Lincoln County, Wyoming, and (b) to transport gas gathered by Rendezvous, a gathering company, and its owners, Questar Gas Management Company (QGM) and Mountain Gas Resources, Inc. (MGR), also gathering companies; (2) a part 157, Subpart F blanket certificate to undertake a variety of routine jurisdictional activities; and (3) waivers of reporting requirements (including Form 2), the Uniform System of Accounts, and part 154 requirements for filing and maintaining tariffs and rate schedules. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Perry Richards, Rendezvous Gas Services Company, L.L.C., 1050 17th Street, Suite 500, Denver, Colorado 80265, phone: (303) 672–6986, Fax: (303) 308–3610.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–106 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–276–003]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing

January 5, 2005.

Take notice that on December 21, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective December 1, 2004:

Fourth Revised Sheet No. 10,
Fourth Revised Sheet No. 11.

Southern Star states this filing is being made to place into effect interim reduced rates in lieu of the motion rates currently effective and subject to refund. Southern Star also states that the interim reduced rates will be billed on a month-to-month basis pending the filing of a settlement in the above referenced proceeding and the Commission's approval of such settlement. Southern Star further states that it reserves the right, and requests authority, to withdraw such interim reduced rates and to prospectively reinstate the motion rates at any time by filing with the Commission to withdraw such interim reduced rates. Southern Star indicates that the filing is expressly conditioned upon receipt of such authority to reinstitute the motion rates.

Southern Star states that copies of the tariff sheets are being mailed to Southern Star's jurisdictional customers and interested state commissions, in addition to all parties appearing on the official service list of this docket.

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 on or before the date as indicated below. 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.

Protest Date: 5 p.m. eastern time on January 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–113 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–42–000]

Tennessee Gas Pipeline Company; Notice of Application

January 6, 2005.

Take notice that on December 30, 2004, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana St., Houston, Texas 77002, filed an application in Docket No. CP05–42–000 pursuant to section 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157(A) of the Commission's Regulations, for authorization to abandon two Solar Centaur T–3002R (Centaur T–3002R) turbines that drive centrifugal compressors at its Compressor Station 325 in Liberty County, New Jersey, and replace them with two Solar Centaur 40–4700S (Centaur 40) turbines that drive centrifugal compressors to comply with the Clean Air Act Amendments of 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Tennessee explains that upon direction of the Environmental Protection Agency (EPA), the New Jersey Department of Environmental Protection revised its regulations in April 2004 eliminating the open market emission trading program which had allowed owners and operators to use discrete emission reduction credits to comply with the EPA NO_X Reasonably Available Control Technology (RACT) emission levels. Tennessee further explains that the elimination of this program requires Tennessee to adopt an alternative method to meeting the EPA's NO_X RACT levels, and Tennessee is therefore proposing to replace the two existing Centaur T–3002R turbines with two Centaur 40 turbines at Compressor Station 325.

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, 1001 Louisiana, Houston, Texas 77002, at (713) 420–5751.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: January 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–93 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–137–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

January 6, 2005.

Take notice on December 30, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets, as listed on Appendix B to the filing, to become effective February 1, 2005.

Texas Eastern states that these revised tariff sheets are filed pursuant to section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of 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. E5–92 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–66–000, ER05–66–001]

Walden Energy, L.L.C.; Notice of Issuance of Order

January 5, 2005.

Walden Energy, L.L.C. (Walden) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy and capacity at market-based rates. Walden also requested waiver of various Commission regulations. In particular, Walden requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Walden.

On January 3, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development–South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Walden should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is February 2, 2005.

Absent a request to be heard in opposition by the deadline above, Walden is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Walden, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Walden's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–111 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL88–1–008, et al.]

Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana et al.; Electric Rate and Corporate Filings

January 4, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company

[Docket Nos. EL88–1–008, ER88–31–007 and ER88–32–007]

Take notice that on December 28, 2004, Indiana Michigan Power Company (I&M) tendered a compliance filing, pursuant to the Commission's June 3, 1992, Opinion No. 373 and Order on Initial Decision, 59 FERC ¶61,260, which addressed, among other things, the appropriateness of periodic reviews of nuclear decommissioning costs and funding.

I&M states that copies of the filing were served upon its current jurisdictional customers, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on January 18, 2005.

2. Carolina Power & Light Company, Florida Power Corporation

[Docket Nos. ER01–1807–015, ER01–2020–012]

Take notice that on December 3, 2004, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., submitted a compliance filing consisting of two refund reports pursuant to the Commission's Order issued May 21, 2003 in Docket No. ER01–1807–005, *et al.*, 103 FERC 61,209 (2003).

Carolina Power & Light Company states that copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: 5 p.m. Eastern Time on January 14, 2005.

3. Armstrong Limited Energy Partnership, LLC; Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Nuclear Marketing I, Inc.; Dominion Nuclear Marketing II, Inc.; Dominion Nuclear Marketing III, Inc.; Dresden Energy, LLC; Elwood Energy, LLC; Fairless Energy, LLC; Kincaid Generation, LLC; Pleasants Energy, LLC; State Line Energy, LLC; Troy Energy, LLC; Virginia Electric & Power Company

[Docket Nos. ER02–24–004, ER01–468–003, ER00–3621–004, ER00–3620–003, ER00–3619–003, ER00–3746–005, ER02–22–004, ER99–1695–004, ER02–23–006, ER99–1432–005, ER02–26–004, ER96–2869–007, ER02–25–004, ER00–1737–005]

Take notice that, on December 27, 2004 Dominion Resources Services on behalf of Armstrong Limited Energy Partnership, LLP, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing III, Inc., Dresden Energy, LLC, Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, LLC, Pleasants Energy, LLC, State Line Energy, LLC, Troy Energy, LLC and Virginia Electric & Power Company submitted its response to the Commission's May 13, 2004 Order Implementing New Generation Market Power Analysis and Mitigation Procedures, 107 FERC 61,168.

Comment Date: 5 p.m. Eastern Time on January 19, 2005.

4. Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–2233–012, EC03–14–006]

Take notice that, on December 28, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed certain cost information pertaining to transmission-related services performed for the Midwest ISO by GridAmerica LLC in compliance with the Commission's December 19, 2002 Order, *Ameren Services Company, et al.*, 101 FERC ¶ 61, 320 (2002).

The Midwest ISO requested waiver of the service requirements set forth in 18 CFR 385.2010. Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter and that the Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on January 18, 2005.

5. Pacific Gas and Electric Company

[Docket No. ER04–415–004]

Take notice that on December 30, 2004, Pacific Gas and Electric Company (PG&E) submitted a compliance filing pursuant to Ordering Paragraph E of the Commission's Order issued November 30, 2004, in Docket Nos. ER04–415–000, 001 and 002, 109 FERC 61,242 (2004).

PG&E states that copies of this filing have been served on Berry Tannehill, Berry University, Big Creek, the California Independent System Operator Corporation, California Public Utilities Commission, and the parties in Docket No. ER04–415.

Comment Date: 5 p.m. Eastern Time on January 21, 2005.

6. Illinois Power Company

[Docket No. ER04–1254–002]

Take notice that on December 20, 2004, Illinois Power Company (Illinois Power) submitted revised sheets to it Open Access Transmission Tariff pursuant to the Commission's Order issued November 19, 2004 in Docket Nos. ER04–1239–000 and ER04–1254–000, 109 FERC 61,185. Illinois Power requested an October 1, 2004 effective date for the revised sheets.

Comment Date: 5 p.m. Eastern Time on January 11, 2005.

7. Geysers Power Company, LLC

[Docket No. ER05–253–001]

Take notice that on December 27, 2004, Geysers Power Company, LLC (Geysers Power) submitted substitute revised rate schedule sheets to Geysers Power Company's Rate Schedule FERC No. 5 to correct inadvertent errors in its November 23, 2004 filing in Docket No. ER05–523–000.

Geysers Power states that copies of the filing were served upon the official service list.

Comment Date: 5 p.m. Eastern Time on January 18, 2005.

8. Upper Peninsula Power Company

[Docket No. ES05–15–000]

Take notice that on December 22, 2004, Upper Peninsula Power Company (Upper Peninsula) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $20 million at any time.

Upper Peninsula also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. Eastern Time on January 25, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–83 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 487–037–PA]

PPL Holtwood, LLC; Notice of Availability of Environmental Assessment

January 5, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Lake Wallenpaupack Hydroelectric Project, located on the Wallenpaupack Creek and Lackawaxen River, in Pike and Wayne Counties, Pennsylvania, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupportsectionferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Wallenpaupack Project No. 487'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. For further information, contact Patrick Murphy at (202) 502–8755 or by e-mail at *patrick.murphy@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–112 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, and Establishing Procedural Schedule and a Deadline for Submission of Final Amendments

January 6, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license or exemption from licensing.

b. *Project No.:* 2204–024.

c. *Date Filed:* December 30, 2004.

d. *Applicant:* City and County of Denver, Colorado, acting by and through its Board of Water Commissioners.

e. *Name of Project:* Williams Fork Reservoir Project.

f. *Location:* On the Williams Fork River near its confluence with the Colorado River at Parshall, in Grand County, Colorado. No federal lands would be affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kevin Urie, Licensing Project Coordinator, Denver Water, 1600 W. 12th Ave., Denver, CO 80204, (303) 628–5987.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077 or *dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for requests for cooperating agency status:* February 28, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application is not ready for environmental analysis at this time.

m. *The existing project consists of:* (1) The 209-foot-high, 670-foot-long concrete thin arch dam with a crest elevation of 7,814 feet above mean sea level (msl); (2) the Williams Fork reservoir with a surface area of 1,628 acres and storage of 96,822 acre-feet at elevation 7,811 feet msl; (3) a reinforced concrete penstock intake on the face of the dam, with a 7-foot by 5-foot fixed wheel penstock gate controlling flows into a 66-inch-diameter steel penstock running through the dam; (4) river outlet works on the face of the dam, leading to a 54-inch-diameter steel embedded pipe that conveys water to the outlet works valves; (5) a 66-foot-long, 30-foot-wide, 60-foot-high concrete powerhouse at the toe of the dam, containing one vertical-axis turbine/generator with a capacity of 3,150 kilowatts (kW); (6) a tailrace excavated in the streambed rock, carrying the combined powerhouse and river outlet discharges; (7) a 60-foot by 40-foot switchyard; (8) and appurtenant equipment.

The applicant requests the Commission to first review the application for a small hydroelectric power project exemption from licensing, in which the applicant would increase the project's generating capacity to 3,650 kW by installing a second turbine/generator. If the project with the proposed capacity increase does not qualify for an exemption, the applicant requests that this application be considered an application for a new license, under which the applicant would continue to operate the existing turbine/generator with a 3,150-kW capacity and would not install a second unit.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket

number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the Colorado State Historic Preservation Officer (SHPO), as required by (106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue acceptance or deficiency letter: February 2005.

Request additional information: February 2005.

Issue acceptance letter: May 2005.

Notice soliciting terms and conditions: May 2005.

Notice of the availability of the EA: September 2005.

Ready for Commission's decision on the application: April 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. E5–99 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–1102–003, ER03–1102–004, EL05–14–000]

California Independent System Operator Corporation; Notice of Agenda of Staff Technical Conference

January 6, 2005.

As announced in the Notice of Technical Conference issued on December 3, 2004, the Commission Staff will convene a technical conference on Wednesday, January 12, 2005, at 9 a.m. (e.s.t.), at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Based on the response to Staff's request for alternative proposals to the CAISO's proposed self-certification process, continuing this conference through Thursday, January 13, 2005, will not be necessary. The purpose of the conference is to discuss with the California Independent System Operator Corporation (CAISO) and interested parties how best to achieve the CAISO's objective of ensuring that ancillary services bids are backed by a physical resource based on the presentation of proposals at the technical conference.

Please take notice of the conference agenda below:

I. Opening remarks by Commission staff.

II. Presentation by the CAISO on the proposed self-certification process.

III. Presentation by Powerex on its alternative proposal to institute a tagging procedure to verify ancillary services commitments.

IV. Comments from staff.

The technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, in Room 3M–2B. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the conference, please contact: Marion Whitaker at (202) 502–8264 or at *marion.whitaker@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–94 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–3–000]

Centerpoint Energy Gas Transmission; Notice of Site Visit

January 5, 2005.

On Thursday, January 13, 2005, the staff of the Federal Energy Regulatory Commission (FERC) will conduct a site visit to view components of the Line AD Expansion Project in Caddo, Grady and Hughes counties, Oklahoma. We will meet at 8 a.m. (CST) at The Best Western Inn of Chickasha, 2101 South 4th Street, Chickasha, Oklahoma and proceed to the proposed Hinton Compressor Station site in Caddo County, and then to the two other compressor station sites. Interested persons may attend, but must provide their own transportation.

For additional information about the site visit, please contact the FERC's Office of External Affairs at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. E5–114 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–6–000 and -001]

Enbridge Pipelines (KPC); Notice Of Technical Conference

January 6, 2005.

Take notice that the Commission staff will convene a technical conference on Wednesday, January 26, 2005, from 10 a.m. to 5 p.m. (e.s.t.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the conference is to address the negative deferred fuel account balance and surplus gas on Enbridge Pipelines (KPC) (Enbridge KPC). The Commission directed its staff to convene this technical conference in a December 22, 2004 order on rehearing and establishing technical conference.[1]

This case began on October 1, 2003, as a result of revised tariff sheets submitted by Enbridge KPC to adjust its fuel reimbursement percentages to reflect changes in its fuel usage and lost and unaccounted for gas (L&U). The revised tariff sheets proposed, among other things, a decrease in the fuel reimbursement percentages (FRPs) that became effective November 1, 2003. Enbridge KPC should be prepared to further explain its proposal, and address the concerns raised in the December 1, 2003, request for rehearing of Kansas Corporation Commission (KCC) and its October 27, 2004, response to Staff's August 27, 2004, data request.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659

[1] Enbridge Pipelines (KPC), 109 FERC ¶61,346 (2004).

(TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. E5–103 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2237–013]

Georgia Power Company; Notice of Dispute Resolution Panel Meeting and Technical Conference

January 6, 2005.

On January 5, 2005, Commission staff, in response to the filing of a notice of study dispute by the U.S. Department of the Interior on December 17, 2004, convened a three-person Dispute Resolution Panel pursuant to 18 CFR 5.14(d).

The Panel will hold a technical conference at the time and place noted below. All interested individuals, organizations, and agencies are invited to attend the technical conference. The Panel will provide an opportunity to hear from the disputing agency, potential applicant, and other participants who have an interest in the outcome of the dispute. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at its discretion, limit the speaking time for each participant. A court reporter will be present to provide a written record of the technical conference.

Technical Conference

Date: Wednesday, January 19, 2005.

Time: 9 a.m.–5 p.m. (c.s.t.).

Place: Chattahoochee Nature Center, 9135 Willeo Road, Roswell, Georgia, 30075, phone: (770) 992–2055.

Magalie R. Salas,

Secretary.

[FR Doc. E5–102 Filed 1–11–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7860–7]

California State Nonroad Engine and Vehicle Pollution Control Standards; Opportunity for Public Hearing and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and request for public comment.

SUMMARY: The California Air Resources Board (CARB), has requested EPA authorization, under section 209(e) of the Clean Air Act (Act), for CARB to enforce California's Marine Spark Ignition Engine regulations for outboard marine engines, personal watercraft, and inboard and sterndrive marine engines, and to enforce California's Off-Road Large Spark Ignition Engine regulations. As the Act requires, EPA is announcing the opportunity for a public hearing and requesting public comment on each of these CARB requests.

DATES: EPA has tentatively scheduled a public hearing for the Marine Engine regulations request on February 28, 2005 commencing at 9:30 a.m., and a public hearing for the Large Spark Ignition Engine regulations on February 28, 2005 commencing at 1:30 p.m. EPA will hold each hearing only if a party notifies EPA by February 2, 2005 expressing its interest in presenting oral testimony regarding either (or both) of CARB's requests. By February 2, 2005, any person who plans to attend either hearing should contact Robert M. Doyle (see contact information below) to learn if the hearing will be held. Regardless of whether or not a hearing is held on either request, any party may submit written comments regarding CARB's request by or before March 14, 2005.

ADDRESSES: Parties wishing to present oral testimony at either public hearing should provide written notice to Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 1310 L Street, NW., Washington, DC. Parties wishing to send written comments should provide them to Mr. Doyle at the above address. EPA will make available for public inspection at the Air and Radiation Docket all written comments received from interested parties, in addition to any testimony given at the public hearing. The EPA Docket Center Public Reading Room is open during working hours from 8:30 a.m. to 4:30 p.m. at Room B102, 1301 Constitution Avenue, NW., Washington, DC. The telephone number for the Public Reading Room is (202) 566–1744 The reference number for the Marine Spark Ignition Engines regulations request docket is OAR–2004–0403, and the reference number for the Off-Road Large Spark Ignition Engines regulations request docket is OAR–2004–0404.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (U.S. mail), 1310 L Street, NW., Room 340 Washington, DC 20005(courier mail). Telephone: (202) 343–9258, Fax: (202) 343–2804, e-mail: *Doyle.Robert@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

EPA makes available an electronic copy of this Notice on the Office of Transportation and Air Quality (OTAQ) homepage (*http://www.epa.gov/OTAQ*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled ''Regulations.'' This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EPA–AIR/*). Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

Additionally, an electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although 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. Once in the electronic docket system, select ''search,'' then key in the appropriate docket ID number for Docket OAR–2004–0403 (the Marine Spark Ignition Engines regulations request), or Docket OAR–2004–0404 (the Off-Road Large

Spark Ignition Engines regulations request).

II. Background

(A) Nonroad Authorizations

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.[1] Section 209(e)(2) of the Act allows the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[2]

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).[3] The section 209(e) rule and its codified regulations[4] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards:

40 CFR part 85, subpart Q, § 85.1605 provides:

(a) The Administrator shall grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement that EPA cannot find ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[5] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[6] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.[7]

With regard to enforcement procedures accompanying standards, EPA must grant the requested authorization unless it finds that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 213(a), or unless the Federal and California certification test procedures are inconsistent.[8]

Once California has received an authorization for its standards and enforcement procedures for a certain group or class of nonroad equipment engines or vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of these engines or vehicles without the necessity of receiving an additional authorization.[9]

If California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act, and raises no new issues

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[1] Section 209(e)(1) of the Act provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

[2] *See* 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR part 85, subpart Q, §§ 85.1601—85.1606.

[3] As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(e)(1).

[4] *See* 40 CFR part 85, subpart Q, § 85.1605.

[5] *See* 59 FR 36969, 36983 (July 20, 1994).

[6] Section 209(e)(1) of the Act has been implemented, *see* 40 CFR part 85, subpart Q §§ 85.1602, 85.1603.

§ 85.1603 provides in applicable part:

(a) For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles, as defined in this subpart, it is considered farm or construction equipment or vehicles. (b) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

§ 85.1602 provides definitions of terms used in § 85.1603 and states in applicable part:

Construction equipment or vehicle means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

Farm Equipment or Vehicle means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

Primarily used means used 51 percent or more.

[7] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. *See, e.g.*, 43 FR 32182 (July 25, 1978).

[8] *See, e.g., Motor and Equipment Manufacturers Association, Inc.* v. *EPA,* 627 F.2d 1095, 1111–14 (D.C. Cir. 1979), *cert. denied,* 446 U.S. 952 (1980) (*MEMA I*); 43 FR 25729 (June 14, 1978).

While inconsistency with section 202(a) includes technological feasibility, lead time, and cost, these aspects are typically relevant only with regard to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

[9] *See* 43 FR 36679, 36680 (August 18, 1978).

affecting EPA's previous authorization determination.[10]

(B) The Marine SI Engine Regulations Requests

CARB has submitted to EPA three separate but related requests to authorize various marine SI engine regulations. EPA will consider these requests together in our review of the requests to enforce CARB's marine SI engine emissions regulation program. These requests are summarized in order below.

(1) By letter dated April 4, 2000, CARB requested EPA authorization to enforce California's marine SI regulations affecting outboard marine engines. The CARB regulations set emission standards for these marine engines commencing with model year 2001 for both certification and in-use standards. The first tier of the CARB regulations basically adopted the standards equivalent to the EPA 2006 marine SI engines. CARB also adopted a second tier of outboard engine regulations, commencing in model year 2004 equivalent to 80% of the EPA 2006 standards, and a third tier, commencing in 2008, equivalent to 35% of the EPA 2006 standard. Manufacturers are permitted to meet the standards directly or on a corporate average basis, where some engine families may emit more than the emission standard if they are offset by engines which emit sufficiently less than the standard. To accompany the new standards, CARB also adopted regulations requiring manufacturer production line testing (along with CARB authority to conduct Selective Enforcement Audits), manufacturer demonstration of in-use compliance, emission warranties, permanent emission certification labels for covered engines, and special ''hang tags'' for consumer/environmental awareness of clean technology engines.[11]

(2) By letter dated June 5, 2002, CARB extended the earlier authorization request to include regulations for marine SI engines in personal watercraft (PWC)[12] for model year 2002 and beyond. The PWCs are subject to the same emission standards and requirements as the marine outboard SI engines discussed above. The CARB marine regulations had included both outboards and PWCs from the outset, but PWCs had not been included in the original CARB request because of technical issues raised by PWC manufacturers related to compliance with the CARB standards for model year 2001. The June 5, 2002 CARB request stated that those issues had been resolved, so CARB submitted this extension. In addition, CARB submitted for authorization the marine engine consumer hang tag regulations because the earlier model year applicability issue had been resolved.

(3) By letter dated March 2, 2004, CARB extended the earlier requests by requesting authorization to enforce California's marine SI regulations affecting inboard and sterndrive engines for model years 2003 and beyond.[13] The first tier of regulations, for model year 2003 through 2008, sets a cap reflecting average emission levels of 16.0 grams per kilowatt hour (g/kW-hr) HC plus NO_X which manufacturers can meet directly by engine family or by corporate average. The second tier of standards sets a level of 5.0 g/kW-hr HC plus NO_X and will phase in beginning with 45% of manufacturers' sales in 2007, 75% in 2008 and 100% in 2009 and beyond. For 2007 and 2008, compliance for the engine is directly with the standard, with no option for sales weighted-averaging. Besides these new standards, other regulations establish requirements for certification, emission test procedures, emissions warranty, and emission certification labels and consumer/environmental awareness hang tag labels. In addition, the inboard/sterndrive regulations require on-board diagnostics for these engines. Finally, as part of the Inboard/Sterndrive rulemaking, CARB adopted some minor amendments to the outboard and PWC regulations to clarify some definitions and labeling requirements made necessary by the adoption of the regulations for Inboard/Sterndrive marine engines.

(C) The Off-Road Large Spark Ignition Engines Regulations Request

By letter dated February 15, 2000, CARB requested EPA authorization to enforce California's Off-Road Large Spark Ignition Engine (LSI) regulations.[14] The CARB regulations set emission standards for these engines commencing with model year 2001 for certification and with model year 2004 for in-use compliance. There are two sets of standards depending on the size of the engine; one set for LSI engines less than or equal to 1.0 liter displacement, and the other for LSI engines greater than 1.0 liter displacement. For the smaller LSI engines, CARB set standards for HC plus NO_X and for CO at static levels for model year 2002 and beyond, and 100% of a manufacturer's sales must meet the standards each year. For the larger LSI engines, CARB approved two tiers of emission levels. For Tier 1, manufacturers are able to phase-in compliance at certification with 25% of the sales for 2001, 50% for 2003, and 75% for 2003, and manufacturers have no in-use compliance requirement. For Tier 2, beginning with the 2004 model year, manufacturers have to meet the standards at certification with 100% of sales, and are subject to in-use compliance with less stringent standards for model years 2004 through 2006 (with an engine durability period of 3500 hours or 5 years) and full in-use standards for model years 2007 and beyond (with a durability period of 5000 hours or 7 years).

To accompany the new standards, CARB also adopted regulations requiring manufacturer production line testing (along with CARB authority to conduct Selective Enforcement Audits), manufacturer required in-use testing, an in-use emission credit program, permanent emission labels, and emission warranties. CARB also adopted provisions to provide relief to small volume manufacturers (annual production under 2000 engines) basically by delaying the time when they must comply with in-use standards until 2004.

III. Procedures for Public Participation

If a public hearing is held on either request, any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with Robert Doyle at the address listed above no

[10] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B, p. 28.

[11] At the time this request was presented to EPA, the California Office of Administrative Law had not approved the section of the regulations dealing with these hang tags because of problems it found with the applicability date of the hang tag requirement. These problems were resolved and the hang tag requirement was included as part of the CARB June 5, 2002 request described below.

[12] Personal watercraft are small watercraft on which the rider sits or stands during operation, such as jet skis and wave runners. CARB Staff Report, October 23, 1998, at p. 9, Docket OAR–2004–0403.

[13] Inboard engines include a propeller shaft that penetrates the hull of the marine vessel, while the engine and the remainder of the drive unit is internal to the hull of the marine watercraft. In sterndrive engines, the drive unit is external to the hull of the marine watercraft, while the engine is internal to the hull of the marine watercraft. CARB Staff Report, June 8, 2002, at p. 4, Docket OAR–2004–0403.

[14] These engines are often derived from automobile engines, although they have less sophisticated fuel and emission control systems, and are fueled usually by either gasoline or liquified petroleum gas (LPG). Typical applications for these LSI engines are forklifts, portable generators, large turf care equipment, irrigation pumps, welders, air compressors, scrubber/sweepers, and airport service vehicles. CARB Staff Report, September 22, 1998, p. 6, Docket OAR–2004–0404.

later than February 11, 2005. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held on either request, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 14, 2005. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket, in Docket OAR–2004–0403 (the Marine Spark Ignition Engines regulations request), and Docket OAR–2004–0404 (the Off-Road Large Spark Ignition Engines regulations request).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: January 5, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 05–628 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0417; FRL–7692–6]

DLT Solutions, Inc. and Oracle Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to DLT Solutions, Inc. and its subcontractor, Oracle Corp., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). DLT Solutions, Inc. and its subcontractor, Oracle Corp., have been awarded a contract to perform work for OPP, and access to this information will enable DLT Solutions, Inc. and its subcontractor, Oracle Corp., to fulfill the obligations of the contract.

DATES: DLT Solutions, Inc. and its subcontractor, Oracle Corp., will be given access to this information on or before January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0521; e-mail address: *johnson.erik@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0417. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Contractor Requirements

Under Contract No. GS–35F–4543G–4W–0910–NBSX, DLT Solutions, Inc. and its subcontractor, Oracle Corp., shall provide to the Office of Pesticide Programs the following:

- Technical support to upgrade the Oracle Relational Database Management System;
- Develop a project plan that demonstrates their understanding of the statement of work;
- Prepare written procedures for upgrading the OPPIN production server;
- Provide recommendations and analysis of the best practices of the use of the Oracle framework;
- Design, develop and enhancement existing OPPIN database and the OPPIN software;

• Maintain existing software, including reports, menus, screens and other programs; and

• Correct software problems identified at all phases of testing.

The EPA has determined that access by DLT Solutions, Inc. and its subcontractor, Oracle Corp., to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with DLT Solutions, Inc. and its subcontractor, Oracle Corp., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, DLT Solutions, Inc. and its subcontractor, Oracle Corp., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to DLT Solutions, Inc. and its subcontractor, Oracle Corp., until the requirements in this document have been fully satisfied. Records of information provided to DLT Solutions, Inc. and its subcontractor, Oracle Corp., will be maintained by EPA Project Officers for this contract. All information supplied to DLT Solutions, Inc. and its subcontractor, Oracle Corp., by EPA for use in connection with this contract will be returned to EPA when DLT Solutions, Inc. and its subcontractor, Oracle Corp., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: December 28, 2004.

Kathleen Knox,

Acting Director, Information Resources and Services DivisionOffice of Pesticide Programs.

[FR Doc. 05–621 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004–0416; FRL–7692–5]

Systalex Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Systalex Corp. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Systalex Corp. has been awarded multiple contracts to perform work for OPP, and access to this information will enable Systalex Corp. to fulfill the obligations of the contract.

DATES: Systalex Corp. will be given access to this information on or before January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0521; e-mail address: *johnson.erik@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0416. 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 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Contractor Requirements

Under number 4D–5318–NBSX, the contractor will:

• Provide software development and related support services to meet the requirements of the Pesticide Registration Improvement Act of 2004.

• Develop a project plan demonstrating their understanding of the statement of work.

• Preform testing of all delivered software using personnel other than those developing the software being tested prior to delivery. Quality assurance activities included in this testing must demonstrate software performs to specifications outlined in the written instructions.

• The modifications have caused no problems in parts of the system which were not changed.

• The software is reliable.

This contract involves no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA

under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Systalex Corp., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Systalex Corp. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Systalex Corp. until the requirements in this document have been fully satisfied. Records of information provided to Systalex Corp. will be maintained by EPA Project Officers for these contracts. All information supplied to Systalex Corp. by EPA for use in connection with these contracts will be returned to EPA when Systalex Corp. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: December 28, 2004.

Kathleen D. Knox,

Acting Director, Information Resources and Services Division Office of Pesticide Programs.

[FR Doc. 05–622 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7695–1]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), EPA gives notice of a 3–day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on February 8, 2005, from 8 a.m. to 10:45 a.m., on February 9, 2005, from 8 a.m. to 10 a.m., and on February 10, 2005, from 9 a.m. to 4:30 p.m.

Registration to attend the meeting, identified by docket ID number OPPT–2002–0001, must be received on or before February 3, 2005. Registration will also be accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC February 2005 meeting, must be received in writing on or before January 21, 2005.

Written comments, identified as NPPTAC February 2005 meeting, may be submitted at any time. Written comments received on or before January 21, 2005, will be forwarded to the NPPTAC members prior to or at the meeting.

Meetings of the four Work Groups of the Committee will take place as follows. The High Production Volume (HPV) Work Group will meet on February 8, 2005, from 11 a.m. to 6 p.m., to discuss activities related to EPA's HPV Challenge Program. The Pollution Prevention (P2) Work Group will meet on February 8, 2005, from 11 a.m. to 6 p.m., to discuss activities related to EPA's Pollution Prevention Programs. The Tribal Issues Work Group will meet on February 9, 2005, from 10:15 a.m. to 5:30 p.m., to discuss activities related to EPA's coordination with Tribes and Tribal Organizations. The Broader Issues Work Group will meet on February 9, 2005, from 10:15 a.m. to 5:30 p.m., to discuss activities related to EPA's New Chemicals and Existing Chemicals Programs.

ADDRESSES: The meeting will be held at the Hilton Arlington and Towers, 950 N. Stafford Street, Arlington, VA 22203.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: John Alter, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents

of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number OPPT–2002–0001, NPPTAC February meeting in the subject line on the first page of your comment.

1. *By mail.* OPPT Document Control Office, Environmental Protection Agency, (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

2. *Electronically.* At *http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier.* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW., Washington, DC.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production Volume Challenge Program; Pollution Prevention; Risk Assessment; Risk Management; Risk Communication; and Coordination with Tribes and other stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may request to attend the meeting by filling out the registration form according to the instructions listed under Unit I.A. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting. Therefore, all seating will be available on a first come, first serve basis.

1. To register to attend the meeting: Pre-registration for the February 2005 NPPTAC meeting and requests for special accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

2. To request an opportunity to provide oral comments: You must register first in order to request an opportunity to provide oral comments at the February 2005 NPPTAC meeting. To register, visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Requests to provide oral comments at the meeting must be submitted in writing on or before January 21, 2005, with a registration form. Please note that time for oral comments may be limited to 3 to 5 minutes per speaker, depending on the number of requests received.

3. Written comments. You may submit written comments to the docket listed under Unit I.B.1. Written comments can be submitted at any time. If written comments are submitted on or before January 21, 2005, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed.

Do not submit any information that is considered CBI.

List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: December 30, 2004.

Maria J. Doa,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05–623 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7860–5]

Science Advisory Board (SAB) Staff Office; Notification of Upcoming Meetings of the Science Advisory Board Perfluorooctanoic Acid Risk Assessment (PFOA) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference and a public face-to-face meeting of the SAB Perfluorooctanoic Acid Risk Assessment (PFOA) Review Panel.

DATES: *January 25, 2005:* The Panel will hold a public teleconference on January 25, 2005, from 2 p.m. to 5 p.m. (EST).

February 22–23, 2005: The Panel will hold a public face-to-face meeting starting February 22, 2005, at 8:30 a.m., adjourning at approximately 5 p.m. (EST) on February 23, 2005.

ADDRESSES: The public teleconference will take place via telephone only. The public face-to-face meeting of the SAB PFOA Review Panel will be held at the SAB Conference Center located at the Woodies Building, 1025 F Street, NW., Room 3705, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference may contact Dr. Sue Shallal, EPA Science Advisory Board Staff (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone/voice mail: (202) 343–9977 or via e-mail at *shallal.suhair@epa.gov.* Technical Contact: The technical contact in EPA's Office of Pollution Prevention and Toxics (OPPT) is Dr. Jennifer Seed who can be reached at via e-mail at *seed.jennifer@epa.gov* or via telephone/voice mail: 202–564–7634.

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the SAB PFOA Review Panel will hold a public teleconference and meeting to conduct a peer review of EPA's Perfluorooctanoic Acid (PFOA) Risk Assessment. The dates and times for the teleconference and meeting are provided above.

Background: EPA's Office of Pollution Prevention and Toxics (OPPT) had requested that the SAB peer review the Agency's Perfluorooctanoic Acid (PFOA) Risk Assessment. Background on this SAB review and the process for formation of this review panel was provided in a **Federal Register** Notice published on March 29, 2004 (69 FR 16249–16250).

The purpose of the upcoming teleconference is for the SAB PFOA Review Panel to review available advisory and background materials, identify additional information needs, discuss the draft charge questions to the SAB and plan for a face-to-face meeting. The purpose of the face-to-face meeting is to conduct a review of the PFOA risk assessment and prepare a response to the charge questions.

Availability of Meeting Materials: A final roster of the SAB PFOA Review Panel, meeting agendas, and charge questions to the SAB will be posted on the SAB Web site (*http://www.epa.gov/sab/*) prior to the meeting. EPA's PFOA risk assessment and related background information on PFOA may be found at: *http://www.epa.gov/opptintr/pfoa/index.htm.*

Procedures for Providing Public Comment: It is the policy of the EPA

Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the PFOA Review Panel's meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Shallal no later than five business days prior to the teleconference or meeting in order to reserve time on the meeting agenda. For teleconferences, opportunities for oral comment will usually be limited to no more than three minutes per speaker or organization and no more than fifteen minutes total. For face-to-face meetings, opportunities for oral comment will usually be limited to no more than ten minutes per speaker or organization (unless otherwise stated). Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least five business days prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: January 6, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–501 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0167; FRL–7691–5]

2,4-Dichlorophenoxyacetic Acid Revised Risk Assessments and Preliminary Risk Reduction Options (Phase 5 of 6-Phase Process); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the phenoxy herbicide, 2,4-dichlorophenoxyacetic acid (2,4-D). In addition, this notice releases and starts a public comment period on the Agency's preliminary risk reduction options for 2,4-D. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for 2,4-D through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0167, must be received on or before March 14, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; fax number: (703) 308–8041; e-mail address: *hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0167. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper,

will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0167. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–-2004–0167. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–00167.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0167. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued

for comment through a **Federal Register** notice published on June 23, 2004 (69 FR 35019) (FRL–7362–7); responses to comments; and related documents for 2,4-D. EPA is releasing for public comment its preliminary risk reduction options for 2,4-D. EPA developed the risk assessments for 2,4-D as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

2,4-D is a phenoxy herbicide used for selective control of broadleaf weeds in numerous agriculture, forestry, aquatic, and turf applications. Drinking water risk could potentially be of concern from direct application of 2,4-D to water for aquatic weed control unless it can be demonstrated that the 2,4-D concentration in the water is less than 70 parts per billion (ppb) at the time of drinking water diversion. Risk to recreational swimmers maybe of concern for direct aquatic applications of 2,4-D. Preliminary risk reduction options for managing proposal potential drinking water risk and swimmers risk are detailed in the preliminary mitigation proposal document available in the Docket. The primary ecological risk concern for terrestrial use of 2,4-D is to non-target plants, mammals, and birds. The use of 2,4-D for aquatic weed control presents potential risk to aquatic organisms and aquatic plants.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for 2,4-D. Considering EPA's preliminary risk reduction options, such comments and proposals should further discuss ways to manage 2,4-D's potential drinking water and ecological risks resulting from its aquatic and terrestrial use, as discussed in the Agency's risk assessments.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, 2,4-D is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for 2,4-D. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. After considering comments received, EPA will develop and issue the 2,4-D RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 29, 2004.

Debra Edwards,

Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–505 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0393; FRL–7688–8]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 524–EUP–96 from Monsanto Company requesting an experimental use permit (EUP) for the ZMIR39 x MON810 combined insecticidal trait stacked corn hybrids along with ZMIR39 and MON810 corn hybrids; *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn (ZMIR39) and *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (vector PV–ZMCT01) in corn (MON810). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0393, must be received on or before February 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0393. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0393. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0393. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0393.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0393. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI

on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

In the **Federal Register** of December 22, 2004 (69 FR 76732) (FRL–7688–7), EPA announced the issuance of EUP 524–EUP–96 to Monsanto Company, 800 N. Lindberg Blvd., St. Louis, MO 63167. Monsanto has requested to further extend this EUP to March 1, 2006 and to amend it by allowing an additional 3,023 acres to be planted. Plantings are still to include the plant-incorporated protectants ZMIR39 x MON810 combined insecticidal trait stacked corn hybrids along with ZMIR39 and MON810 corn hybrids; *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR39) in corn (ZMIR39) and *Bacillus thuringiensis* Cry1Ab delta-endotoxin and the genetic material necessary for its production (vector PV–ZMCT01) in corn (MON810) for breeding and observation nursery, inbred seed increase production, line per se, hybrid yield, and herbicide tolerance, insect efficacy, product characterization and performance/labeling, insect resistance management, non-target organism and benefit, seed treatment, swine growth and feed efficiency, dairy cattle feed efficiency, beef cattle growth and feed efficiency, and cattle grazing feed efficiency trials. The program is proposed for the States of Alabama, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Virginia, Washinton, and Wisconsin.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 23, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–506 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0067; FRL–7690–4]

TSCA Section 8(e) Reporting Guidance; Correction, Clarification of Applicability, and Announcement Regarding the Issuance Questions and Answers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is correcting certain language that was inadvertently changed from the March 16, 1978, TSCA Section 8(e) Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk (1978 TSCA Section 8(e) Policy Statement) when the Agency issued its TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance (2003 guidance document) on June 3, 2003. The 2003 guidance document clarified certain aspects of TSCA section 8(e) reporting guidance and included a re-publication of major portions of the Agency's 1978 TSCA Section 8(e) Policy Statement. This notice merely re-inserts, verbatim, certain language from the 1978 TSCA Section 8(e) Policy Statement into the June 3, 2003, guidance document. This notice also clarifies the applicability date of the June 3, 2003 guidance document, and announces the addition of questions and answers on the reportability of environmental releases to the Q&A section of the TSCA section 8(e) web page (*http://www.epa.gov/oppt/tsca8e/*).

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Terry O'Bryan, Risk Assessment Division (7403M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7656; e-mail address: *obryan.terry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture, process, import, or distribute in commerce chemical

substances and mixtures. Potentially affected entities include, but are not limited to:

- Chemical manufacturers, processors, and distributors (NAICS 325)
- Petroleum refiners and distributors (NAICS 324)
- Manufacturers of plastic parts and components (NAICS 325211)
- Paints and coatings and adhesive manufacturing (NAICS 3255)
- Cleaning compounds and similar products manufacturing (NAICS 3256)
- Electronics manufacturing (NAICS 334 and 335)
- Automobiles manufacturing (NAICS 3361)
- Aircraft manufacturing (NAICS 336411)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industry Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0067. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A complete, consolidated version of the TSCA section 8(e) Policy Statement and Guidance can be found on the EPA website at: *http://www.epa.gov/oppt/tsca8e/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

II. Why are these Corrections Necessary?

These corrections are necessary to maintain the accuracy of the 1978 TSCA Section 8(e) Policy Statement (43 FR 11110) where certain changes appearing in the 2003 guidance document (68 FR 33129) (FRL–7287–4) were made in error. As noted in the June 3, 2003, **Federal Register** notice, the 2003 guidance document contained earlier guidance issued on TSCA section 8(e) that had not been changed and that was being reprinted for the convenience of all interested persons. In the affected sections covered in Unit III. of this document, the original language of the 1978 TSCA Section 8(e) Policy Statement should have been retained. This notice re-inserts original language from the 1978 TSCA Section 8(e) Policy Statement into the 2003 guidance document as shown in Unit III. of this document.

III. Specific Changes to the 2003 Guidance Document

In the 2003 guidance document, Unit VIII. entitled *Republication of TSCA Section 8(e) Policy Statement and Guidance*, the second paragraph of Part V. entitled *What Constitutes Substantial Risk* is removed and the following language from the 1978 TSCA Section 8(e) Policy Statement is added in its place:

Note that: (i) The effects outlined below should not be reported if the respondent has actual knowledge that the Administrator is already informed of them. (ii) Information respecting these effects can be obtained either directly, by observation of their occurrence, or inferred from designed studies as discussed in Part VI. Nature and Sources of Information Which ''Reasonably Supports Conclusion'' of Substantial Risk.

Also in Unit VIII. of the 2003 guidance document, Part VIII. entitled *Information First Received by a Person Prior to the Effective Date of TSCA*, paragraph (a) is removed and the following language from the 1978 TSCA Section 8(e) Policy Statement is added in its place:

(a) Any information reviewed after January 1, 1977, including not only written reports, memoranda and other documents examined after January 1, 1977, but also information referred to in discussions and conferences in which the person participated after January 1, 1977;

All other text contained in the June 3, 2003 **Federal Register** notice remains as stated therein.

IV. Applicability Date for the June 3, 2003 Guidance Document

In addition to the corrections discussed herein, this notice also clarifies the effective and applicability date of the 2003 TSCA Section 8(e) Policy Clarification and Reporting Guidance. The June 3, 2003 **Federal Register** notice did not include a specific statement regarding the effective date. Thus, by standard Agency practice, this Reporting Guidance became effective and applicable on the publication date.

The best reading of the Guidance is that it is effective upon publication. For instance, the summary statement of the notice describes it as ''finalizing revisions'' to the earlier policy statement, and ''republishing the policy statement...both those portions of the policy statement that are revised and those portions that are not affected by any revisions.'' (68 FR 33129 (emphases added)). Unit II.A. of the notice is entitled *What Action is the Agency Taking?*, and that unit explains that, by the notice, ''[t]he Agency is revising and clarifying'' its earlier policy statement. (68 FR 33130). There are several other statements in the present or present perfect tense that are consistent with the guidance being in effect upon issuance.

Under the auspices of the Agency's TSCA Section 8(e) Compliance Audit Program (''CAP''), a one-time enforcement initiative that took place between 1991 and 1996 regarding pre-1991 TSCA section 8(e) reporting requirements, the Agency had announced that, ''EPA . . . intends to publish a question and answer document to illustrate application of the

guidance. The final revised guidance will not be effective prior to EPA's publication of the question and answer document.'' (See Revised Addendum to the CAP agreement conveyed to the CAP participants via a May 15, 1996 letter from the Office of Enforcement and Compliance Assurance.) This statement of intent was similar to proposals contained in the March 9, 1995 proposed TSCA section 8(e) Guidance which was the subject of a notice of availability published in the **Federal Register** of March 20, 1995 (60 FR 14756) (FRL–4937–6).

The June 3, 2003 **Federal Register** notice discusses the CAP in several places as part of the history of the development of the revised guidance. (See, e.g., 68 FR 33131, Unit II.C.). The notice also mentions the planned question and answer document (68 FR 33133). Yet, the June 3, 2003 notice never linked the effective date of the Reporting Guidance to the publication of a question and answer document. Rather, as mentioned in this unit, the best reading of the notice is that the Guidance was effective and applicable upon publication.

The Agency has now made a question and answer document available. It can be found on the OPPT's TSCA section 8(e) internet site: *http://www.epa.gov/oppt/tsca8e/*.

EPA hopes and expects that the guidance has been, and will continue to be, useful to manufacturers (including importers), processors, and distributors of chemical substances and mixtures in fulfilling their responsibilities under TSCA section 8(e).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping.

Dated: January 3, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–620 Filed 1–11–05; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 13, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 9, 2004 (Open and Closed)

B. Reports

- Corporate Report

C. New Business—Other

- Fiscal Year 2004 Financial Audit

Dated: January 7, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–684 Filed 1–7–05; 4:57 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–2446]

Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an immediate freeze on the filing of certain requests by analog and digital television broadcast stations for changes to existing DTV and analog TV service areas and channels. This freeze will assist the Commission in the process of implementing a channel election and repacking process that will assign to eligible television broadcasters a post-transition DTV channel in the core television spectrum (*i.e.*, channels 2–51).

DATES: The Freeze became effective on August 3, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

SUPPLEMENTARY INFORMATION: Beginning immediately, and until further notice, the Commission will not accept for filing certain requests by analog and digital television broadcast stations for changes to existing DTV and analog TV service areas and channels. Specifically, until further notice, the Commission will not accept for filing the following:

- Petitions for rulemaking to change DTV channels within the DTV Table of Allotments.
- Petitions for rulemaking for new DTV allotment proceedings.
- Petitions for rulemaking to swap in-core DTV and NTSC channels.
- Applications to change DTV channel allotments among two or more licensees.
- Petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license.
- Television modification applications that would increase a station's DTV service area in channels 2–51 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of the freeze public notice; and television modification applications that would increase a station's analog service area in channels 2–51 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) Commission authorizations (license and/or construction permit) and (2) applications on file with the Commission prior to release of the freeze public notice. The Bureau may consider, on a case by case basis and consistent with the public interest, amendments to those applications to, for example, resolve interference with other stations or pending applications or to resolve mutual exclusivity with other pending applications. In earlier public notices, we have frozen maximization applications for channels 52–59 and 60–69.
- Class A station displacement applications and applications for coverage changes that would serve any area that is not already served by that Class A station's authorized facilities. As an exception to this freeze, on-air Class A stations demonstrating that they face imminent disruption of service may

request Special Temporary Authority (STA) to continue operations. Displacement applications filed by out-of-core LPTV stations that have been deemed Class A-eligible requesting to move to an in-core channel where Class A authority could be granted will not be acted on during this freeze, but for such stations, immediate non-Class A LPTV displacement relief may be requested through an STA.

Notwithstanding this freeze, licensees will not be prevented from filing modification applications when the application would resolve international coordination issues or when a broadcast station seeks a new tower site due to the events of September 11, 2001.

The Commission is in the process of developing a channel election and repacking process that will assign to eligible television broadcasters a post-transition DTV channel in the core television spectrum (*i.e.*, channels 2–51). Channel election procedures will be announced in the Commission's *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket No. 03–15, RM 9832. This freeze is a necessary first step to ensure a stable television database prior to the commencement of the channel election process. Prohibiting the filing of new applications and petitions requesting new channels or service areas will allow broadcasters to evaluate stations' technical parameters and thereby facilitate channel elections and the creation of a new DTV Table of Allotments. Imposition of an immediate freeze will ensure that new applications and petitions are not filed in anticipation of future limitations, thus defeating the administrative purpose of the action herein, and will ensure that technical parameters do not continue to change while broadcasters make their channel election decisions.

The Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze imposed in the freeze public notice will be granted only upon a showing of good cause and when grant of the waiver will serve the public interest.

The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A), (d); *Kessler* v. *FCC,* 326 F. 2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, and not delaying the effect of the freeze until 30 days after publication in the **Federal Register**, because to do either would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze. *See* 5 U.S.C. 553(b)(B), (d)(3).

This action is taken by the Chief, Media Bureau pursuant to authority delegated by § 0.283 of the Commission's rules.

Federal Communications Commission.

Steven A. Broeckaert,

Deputy Chief, Policy Division, Media Bureau.

[FR Doc. 05–467 Filed 1–11–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement 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.: 010977–055.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services; Seaboard Marine; Tropical Shipping and Construction Co. Ltd.; and Frontier Liner Services.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Nina (Bermuda) Ltd. d/b/a FTD Shipping Line as a party to the agreement.

Agreement No.: 011584–005.

Title: NYK/WW Lines/NSCSA Cooperative Working Agreement.

Parties: Nippon Yusen Kaisha; Wallenius Wilhelmsen Lines AS, and National Shipping Company of Saudi Arabia.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes HUAL A/S as a party to the agreement.

Agreement No.: 011602–005.

Title: Grand Alliance Agreement II.

Parties: Hapag-Lloyd Container Linie GmbH; Nippon Yusen Kaisha; Orient Overseas Container Line, Inc.; Orient Overseas Container Line Limited; Orient Overseas Container Line (Europe) Limited; P&O Nedlloyd Limited; and P&O Nedlloyd, B.V.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036; and Neal M. Mayer; Hoppel, Mayer & Coleman; 1000 Connecticut Ave., NW., Suite 400; Washington, DC 20036.

Synopsis: The subject modification would suspend the parties' rate and service contract authority under the agreement until further notice.

Agreement No.: 011618–002.

Title: APL/MOL/HMM Trans-Pacific Slot Exchange Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Hyundai Merchant Marine Co., Ltd.

Filing Party: David B. Cook, Esq.; Goodwin Procter LLP; 901 New York Ave., NW.; Washington, DC 20001.

Synopsis: The modification would delete the parties' authority to discuss and agree on rates and the terms and conditions for service contracts.

Agreement No.: 011623–003.

Title: APL/MOL/HMM Asia-US Atlantic Coast Space Sharing Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Hyundai Merchant Marine Co., Ltd.

Filing Party: David B. Cook, Esq.; Goodwin Procter LLP; 901 New York Ave., NW.; Washington, DC 20001.

Synopsis: The modification would delete the parties' authority to discuss and agree on rates and the terms and conditions for service contracts.

Agreement No.: 011894.

Title: Lykes/TMM/Montemar Slot Swap Agreement.

Parties: Lykes Lines Limited, LLC; TMM Lines Limited, LLC; and Montemar Maritima, S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Lykes/TMM to exchange space on their U.S. Gulf-East Coast of South America service for space on Montemar's U.S. East Coast-East Coast of South America service.

Dated: January 6, 2005.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–574 Filed 1–11–05; 8:45 am]

BILLING CODE 6730–01–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.: 010955–007.

Title: ACL/H-L Reciprocal Space Charter and Sailing Agreement.

Parties: Atlantic Container Line AB and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes authority for the parties to discuss and agree on tariff rates.

Agreement No.: 011527–010.

Title: East Coast Americas Service.

Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Howard A. Levy, Esq.; 120 Wall Street; Suite 2020; New York, NY 10005–4001 Synopsis: The proposed modification would delete Article 5.13 providing for rate discussion/voluntary agreement authority and redesignate Article 5.14 as 5.13.

Agreement No.: 011852–016.

Title: Maritime Security Discussion Agreement.

Parties: China Shipping Container Lines, Co., Ltd.; CMA CGM, S.A.; COSCO Container Lines Company, Ltd.; Hanjin Shipping Company, Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; P&O Ports North America, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos; Lambos & Junge; 29 Broadway, 9th Floor; New York, NY 10006 and Charles T. Carroll, Jr.; Carroll & Froelich, PLLC; 2011 Pennsylvania Avenue, NW.; Suite 301; Washington, DC 20006.

Synopsis: The amendment deletes Metropolitan Stevedore Co. as a member to the agreement.

Agreement No.: 011895.

Title: Crowley/Maersk Sealand Trinidad Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S trading as Maersk Sealand (''Maersk'') and Crowley Liner Service, Inc. (''Crowley'').

Filing Party: Arthur F. Mead, III, Esq.; Crowley Maritime Corporation; 9487 Regency Square Boulevard N.; Jacksonville, FL 32225.

Synopsis: The agreement authorizes Maersk to take space on Crowley's service between Port Lisas, Trinidad, and Port Everglades/Jacksonville, Florida.

By Order of the Federal Maritime Commission.

Dated: January 7, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–647 Filed 1–11–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 017855F.

Name: 1st Class International, Inc.

Address: 7272-D Park Circle Drive, Hanover, MD 21076.

Date Revoked: December 16, 2004.

Reason: Failed to maintain a valid bond.

License Number: 005892NF.

Name: Greenbriar Forwarding Co., Inc.

Address: 108 Liberty Street, Metuchen, NJ 08840.

Date Revoked: December 19 2004.

Reason: Failed to maintain valid bonds.

License Number: 017643N.

Name: Grizzard Customs Brokers, Inc.

Address: 4158 Old Dixie Road, Hapeville, GA 30354.

Date Revoked: December 18, 2004.

Reason: Failed to maintain a valid bond.

License Number: 018127N.

Name: Penasa Logistics (USA), Inc.

Address: 1122 La Cienega Blvd., Suite 180, Inglewood, CA 90304.

Date Revoked: December 16, 2004.

Reason: Failed to maintain a valid bond.

License Number: 014427F.

Name: Richard D. Kim dba Best Containers Express Co.

Address: 20435 S. Western Avenue, Suite B, Torrance, CA 90501–1506.

Date Revoked: December 16, 2004.

Reason: Failed to maintain a valid bond.

License Number: 017052N.

Name: Sec Sea & Air, Inc.

Address: 1145 W. Walnut Street, Compton, CA 90020.

Date Revoked: December 19, 2004.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–643 Filed 1–11–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Confianca Cargo & Logistics, LLC, 3545 NW 58th Street, Miami, FL 33142, Officers: Jose Tarcisio De Oliveira, Exec. Director (Qualifying Individual), Helieta M. Correia, General Manager

4 A's Cargo, Inc., 22815 S. Figueroa Street, Carson, CA 90745, Officers: Monina F. Manalo, Vice President, (Qualifying Individual), Rolando G. Tanaleon, President

Fleet Logistics Inc., 21008 Silver Cloud Drive, Diamond Bar, CA 91765, Officer: Jerry Fan, CEO, (Qualifying Individual)

Intlmove Inc., 1880 N.E. 170th Street, N. Miami Beach, FL 33162, Officer: Laurie A. Olson, Dir. Of Operations, (Qualifying Individual)

Liner American Services Corp., dba American Liner Services, dba L.A.S., 1812 NW 82nd Avenue, Miami, FL 33126, Officers: Luis Andres Sara, President, (Qualifying Individual), Pablo Javier Silva, Vice President

Yu Dong Logistics, Inc., 690 Knox Street, Suite 220, Torrance, CA 90502, Officer: Bong Cheon Kim, President, (Qualifying Individual)

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Riverside Logistics, Inc., 8014 Midlothian Tpke, Suite 319, Richmond, VA 23235, Officers: Glenn R. Clark, Vice President (Qualifying Individual), Keith E. Hamlett, President

Cohesion Freight (USA) Inc., 175–01 Rockaway Blvd., Jamaica, NY 11434, Officers: Michael Lee, Vice President, (Qualifying Individual), David Chau, President

Oceanair Logistics Corp., 10925 NW 27th Street, Suite 103, Miami, FL 33172, Officers: Lorenzo J. Lopez, Vice President, (Qualifying Individual), Carlos Antonio Vasquez, President

Sun Express Int'l Inc., 147–48 182nd Street, 2nd Floor, Jamaica, NY 11413, Officer: Kam On Lo, President, (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

LTR Associated Enterprises, Inc., dba RC Export Packers, 5822 East Ridgemont Court, Orange, CA 92869, Officers: Lawrence R. Blashaw, Vice President, (Qualifying Individual), Patricia D. Blashaw, President

Ship Overseas, Inc., 7968 Arjons Drive, Suite 111, San Diego, CA 92126, Officer: Ivor Friedman, President, (Qualifying Individual)

Dated: January 7, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–646 Filed 1–11–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Orders revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 000791F.

Name: SIG M. Glukstad, Inc. dba Miami International Forwarder dba MIF.

Address: 1801 NW 82nd Avenue, Miami, FL 33126.

Order Published: FR: 12/22/04 (Volume 69, No. 245, Pg. 76766).

License Number: 004175NF.

Name: Silken Fortress Corporation dba Transcargo International.

Address: 5858 S. Holmes Avenue, Los Angeles, CA 90001.

Order Published: FR: 12/22/04 (Volume 69, No. 245, Pg. 76766).

License Number: 004108NF.

Name: DRT International, Incorporated.

Address: 7762 NW 72nd Avenue, Medley, FL 33166.

Order Published: FR: 11/12/04 (Volume 69, No. 218, Pg. 65432).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–645 Filed 1–11–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017747N	Tomcar Investment USA, Inc., 8369 North Coral Circle, N. Lauderdale, FL 33068.	November 7, 2004.
015646NF	Universe Freight Brokers, Inc., 3625 NW 82nd Avenue, Suite 401, Miami, FL 33126.	October 30, 2004.
011170NF	Sage Freight Systems Inc., dba Sage Container Lines, 182–30 150th Road, Suite 108, Jamaica, NY 11413.	November 23, 2004.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–644 Filed 1–11–05; 8:45 am]

BILLING CODE 6730–01–P

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, January 18, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 10, 2005.

Robert dev. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–703 Filed 1–10–05; 11:23 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EST), January 19, 2005.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the December 20, 2004, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Investment policy quarterly review.

Parts Closed to the Public

4. Procurement.

5. Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 10, 2005.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 05–721 Filed 1–10–05; 12:56 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

BILLING CODE 6750–01–M

TRANSACTIONS GRANTED EARLY TERMINATION - 12/07/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050222	Waren Holdings Company, Limited	Warner Chilcott PLC	Warner Chilcott PLC
20050246	Cerner Corporation	VitalWorks Inc.	VitalWorks Inc.
20050249	Hellman & Friedman Capital Partners V, L.P.	Trident II, L.P.	Vertafore, Inc.
20050255	Evening Post Publishing Company	Arlington Capital Partners, L.P.	New Vision Broadcasting, LLC
			New Vision Group, LLC
			New Vision Media, LLC
			NVG-Santa Barbara II, Inc.
			NVG-Santa Barbara II, LLC
			NVG-Santa Barbara, Inc.
			NVG-Santa Barbara, LLC
20050257	Wind Point Partners V, L.P.	Dubilier CRM Fund 1, L.P.	Old London Foods Holdings, Inc.
20050260	General Electric Company	SPX Corporation	Edwards Systems Technology, Inc.
			GSBS Development Corporation
			ISS Integrated Security Solutions Limited
			Maxivox, Inc.
			SPX Australia Pty. Ltd.
			SPX Canada (GP)
			SPX (Shanghai) Trading Co. Ltd.
			Troy Sprinkler Limited
			Ziton (Pty) Limited
20050261	Ares Corporate Opportunities Fund, L.P.	BFMA Holding Corporation	BFMA Holding Corporation
20050263	Honeywell International Inc.	Eckhart G. Grohmann	HomMed LLC
20050265	Hershey Trust Co., as Trustee for Milton Hershey School	TSG3 L.P.	Mauna Loa Macadamia Nut Holdings, Inc.
20050279	LR2 AIV, L.P.	Parker Drilling Company	Parker Drilling Offshore USA, LLC
20050282	VHS Holdings, LLC	Tenet Healthcare Corporation	OHM Services, Inc.
			Saint Vincent Hospital, L.L.C.
			Tenet MetroWest Healthcare System, Limited Partnership
20050284	American Capital Strategies, Ltd.	Ronald Steven Lindorf and Teri Lynn Lindorf	Humanvoice, Inc.

			Western Wats Center, Inc.
20050285	Patheon Inc.	Joaquin Viso and Olga Lizardi (Husband and Wife)	MOVA Investments, Inc.
			MOVA Pharmaceutical Corporation
20050286	American Capital Strategies, Ltd.	Lawrence Pasternack	Pasternack Enterprises, LLC
20050287	Joaquin Viso and Olga Lizardi (Husband and Wife)	Patheon Inc.	Patheon Inc.
20050294	Apollo Investment Fund V. L.P.	Goodman Global Holdings, Inc.	Goodman Global Holdings, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/08/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050297	The Stanley Works	Security Group, Inc.	Security Group, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/09/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20041381	E.H. Molson	Adolph Coors, Jr. Trust	Molson Coors Brewing Company
20050172	LOC Acquisition Company	Kirk Kerkorian	Metro-Goldwyn-Mayer Inc.
20050185	Coventry Health Care, Inc.	First Health Group Corp.	First Health Group Corp.
20050189	Liberty Media Corporation	News Corporation, Inc.	News Corporation, Inc.
20050251	The Toronto-Dominion Bank	Banknorth Group, Inc.	Banknorth Delaware Inc.
20050280	Linsalata Capital Partners Fund IV, L.P.	Brian J. Marks	Augusta de Mexico S.A. de C.V.
			Augusta Sportswear, Inc.
			High 5 Sportswear, Inc.
20050281	Johnson & Johnson	Basilea Pharmaceutical AG	Basilea Pharmaceutical AG
20050299	SunGard Data Systems Inc.	Inflow Group, Inc.	Inflow Group, Inc.
20050300	Blackstone Capital Partners (Cayman) IV L.P.	Imperial Chemical Industries PLC	Indopco Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/10/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050270	Commercial Vehicle Group, Inc.	Mayflower Corporation plc	Mayflower Vehicle Systems, Inc.
			Mayflower Vehicle Systems Michigan, Inc.
			Wayne Orrville Investments LLC
			Wayne Stamping and Assembly LLC
20050298	OCM Principal Opportunities Fund III, L.P.	Sterling Group Partners I, LP	HydroChem Holding, Inc.
20050302	Thomas H. Lee Equity Fund V, L.P.	Irving L. Azoff	Eagles Personal Management Company
			ILAA, Inc.

			ILA Management, Inc.
20050304	Irving L. Azoff	Thomas H. Lee Equity Fund V, L.P.	Front Line Management
20050305	Park Avenue Equity Partners, L.P.	IHE, Inc.	Bassett Ready-Mix Co., Inc.
			Meyer Material Company
			Paveloc Industries, Inc.
20050307	Abertis Infraestructuras, S.A.	TBI plc	TBI plc
20050312	H.I.G. Capital Partners III, L.P.	Service Net Solutions, LLC	Service Net Solutions, LLC
20050322	RCN Corporation	Pepco Holdings, Inc.	Starpower Communications, LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 12/13/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050271	First Avenue Networks, Inc.	Aspen Capital Partners LP, Series A	Teligent, Inc.
20050272	Aspen Capital Partners LP, Series A	First Avenue Networks, Inc.	First Avenue Networks, Inc.
20050296	Tenet Healthcare Corporation	Tenet Healthcare Corporation	Saint Vincent Hospital, L.L.C.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/14/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050221	Arcelor S.A.	Companhia Siderurgica de Tubarao	Companhia Siderurgica de Tubarao
20050295	Actuant Corporation	Key Components, Inc.	Key Components, Inc.
20050301	Bruckmann, Rosser, Sherrill & Co., L.P.	J.W. Childs Equity Partners, L.P.	Chevys, Inc.
			Chevys New York, Inc.
			Chevys of Greenbelt, Inc.
			Katmandu Creations, Inc.
			RBA Kansas, Inc.
			Rio Bravo Acquisitions, Inc.
20050316	Exel plc	Power Packaging, Inc.	Power Packaging, Inc.
20050318	Source Financing Corp.	Fortunoff Fine Jewelry and Silverware, Inc.	Fortunoff Fine Jewelry and Silverware, LLC
20050319	Source Financing Corp.	M. Fortunoff of Westbury Corp.	M. Fortunoff of Westbury, LLC
20050325	Countrywide Financial Corporation	Temple-Inland Inc.	Guaranty Residential Lending, Inc.
20050328	Cofra Holding AG	Quickie Manufacturing Corporation	Quickie Manufacturing Corporation

TRANSACTIONS GRANTED EARLY TERMINATION - 12/15/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050228	SIRVA, Inc.	ABN AMRO Holding N.V.	Executive Relocation Corporation

20050292	Robert R. Black, Sr.	Virgin River Casino Corporation	Virgin River Casino Corporation
20050310	Centrica plc	TECO Energy, Inc.	TECO Energy, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/17/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050229	Fayat SA	SPX Corporation	BOMAG Americas, Inc.
20050248	Lakshmi N. Mittal	International Steel Group Inc.	International Steel Group Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/20/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20040658	Genzyme Corporation	ILEX Oncology, Inc.	ILEX Oncology, Inc.
20050151	Connors Bros. Income Fund	Castleberry/Snow's Brands, Inc.	Castleberry/Snow's Brands, Inc.
20050225	Motorola, Inc.	MeshNetworks, Inc.	MeshNetworks, Inc.
20050267	Dow Jones & Company, Inc.	MarketWatch, Inc.	MarketWatch, Inc.
20050269	HeidelbergCement AG	Fimedi S.p.A.	Glens Falls Lehigh Cement Company
20050317	AirTran Holdings, Inc.	J. George Mikelsons	ATA Airlines, Inc.
20050321	GMO Forestry Fund 8-B, LP	International Paper Company	International Paper Company
20050330	Paxton Media Group, LLC	The Durham Herald Company	The Durham Herald Company

TRANSACTIONS GRANTED EARLY TERMINATION - 12/21/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050132	Quantum Corporation	New Suez Acquisition Company	Certance Holdings
20050252	BT Group plc	Infonet Services Corporation	Infonet Services Corporation
20050336	ALLTEL Corporation	ALLTEL Corporation	Toledo MSA Limited Partnership
20050338	SBC Communications Inc.	SBC Communications Inc.	Cingular Wireless LLC
20050343	Rocky Shoes and Boots, Inc.	Citigroup Inc.	EJ Footwear LLC
			Georgia Boot LLC
			HM Lehigh Safety Shoe Co. LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 12/22/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050107	SEACOR Holdings Inc.	Rowan Companies, Inc.	Era Aviation, Inc.
20050245	Videsh Sanchar Nigam Limited	Tyco International Ltd.	Tyco Network (Solutions) Inc.
			Tyco Telecommunications (US) Inc.
20050275	Hormel Foods Corporation	Clougherty Packing Company	Clougherty Packing Company

20050324	New Mountain Partners, L.P.	Ranvir K. Trehan	SETA Corporation

TRANSACTIONS GRANTED EARLY TERMINATION - 12/23/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050329	Wolseley plc	Parnell-Martin Management, LLC	Parnell-Martin Holdings, Inc.
			Parnell-Martin of Virginia, Inc.
			Parnell-Martin Supply Company of Florida
			The Parnell-Martin Companies LLC
20050345	Frontenac VII Limited Partnership	Robert F. Weirauch 2003 Revocable Trust	Wausau Financial Systems, Inc.
20050346	Warburg Pincus Private Equity VIII, L.P.	InfoGenesis	InfoGenesis
20050347	Allied Capital Corporation	Insight Interest Holdings, LLC	Pharmaceuticals Holdings, Inc.
20050351	Telcordia Holdings, Inc.	Science Applications International Corporation	Telcordia Technologies, Inc.
20050352	SKM Equity Fund III, L.P.	Eugene Rosenberg	Bob's Discount Furniture, Inc.
20050366	National City Corporation	The Royal Bank of Scotland Group plc	Charter One Vendor Finance, LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 12/27/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050183	Armor Holdings, Inc.	Jack B. Corwin, Trustee o/J. B. Corwin Revocable t/d 6/26/92	Bianchi International
20050334	Morgenthaler Partners VII, L.P.	Chilmark Fund II, L.P.	Phillips & Temro Industries, Inc.
20050335	ALLTEL Corporation	SBC Communications Inc.	Cingular Wireless LLC
20050357	Penn Virginia Resource Partners, L.P.	Morgan Stanley Dean Witter Capital Partners IV, L.P.	Cantera Natural Gas, LLC
20050358	Seaport Capital Partners II, LP	United Micronesia Development Association, Inc.	Marianas CableVision, Inc.
			UMDA CableCom, Inc.
			UMDA Cable Systems, Inc.
20050361	PepsiAmericas, Inc.	John F. Koons III	Central Investment Corporation
20050364	The "Shell" Transport and Trading Co., p.l.c.	Royal Dutch Petroleum Company	Royal Dutch Petroleum Company
20050368	Howard S. Jonas	Liberty Media Corporation	Net2Phone, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 12/28/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050326	Harbert Distressed Investment Offshore Fund, Ltd.	Orbimage Inc.	Orbimage Inc.
20050367	Koninklijke DSM N.V.	Avecia (Jersey) Limited	Avecia Holdings BV
			Avecia Inc.
20050370	Siebel Systems, Inc.	edocs, Inc.	edocs, Inc.

20050377	Bain Capital Fund VII-E, L.P.	Samsonite Corporation	Samsonite Corporation

TRANSACTIONS GRANTED EARLY TERMINATION - 12/29/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050353	Mitsubishi Tokyo Finaicial Group, Inc.	UFJ Holdings, Inc.	UFJ Holdings, Inc.
20050354	International Steel Group, Inc.	DTE Energy Company	DTE Energy Services, Inc.
20050360	Eagle Materials Inc.	R.A. Cement Investors	Illinois Cement Company
20050381	ALH Holding Inc.	Bain Capital Fund V, L.P.	Alliance Laundry Holdings LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 12/30/2004

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050337	Smiths Group plc	JPMorgan Chase & Co.	MedVest Holdings Corp.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–594 Filed 1–11–04; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0003]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Product Labeling; Medication Guide Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations requiring the distribution of patient labeling, called Medication Guides, for certain products that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information.

DATES: Submit written or electronic comments on the collection of information by March 14, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA, (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Product Labeling; Medication Guide Requirements (OMB Control Number 0910–0393)—Extension

FDA regulations require the distribution of Medication Guides for certain prescription human drug and biological products used primarily on an outpatient basis that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information. These Medication Guides inform patients about the most important information they should know about these products in order to use them safely and effectively. Included is information such as the drug's approved uses, contraindications, adverse drug

reactions, and cautions for specific populations, with a focus on why the particular product requires a Medication Guide. These regulations are intended to improve the public health by providing information necessary for patients to use certain medication safely and effectively.

The regulations contain the following reporting requirements that are subject to the PRA, and the estimates for the burden hours imposed by the following regulations are listed in table 1 of this document:

21 CFR 208.20—Applicants must submit draft Medication Guides for FDA approval according to the prescribed content and format.

21 CFR 314.70(b)(3)(ii) and 21 CFR 601.12(f)—Application holders must submit changes to Medication Guides to FDA for prior approval as supplements to their applications.

21 CFR 208.24(e)—Each authorized dispenser of a prescription drug product for which a Medication Guide is required, when dispensing the product to a patient or to a patient's agent, must provide a Medication Guide directly to each patient unless an exemption applies under 21 CFR 208.26.

21 CFR 208.26 (a)—Requests may be submitted for exemption or deferral from particular Medication Guide content or format requirements.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual frequency per response	Total Annual Responses	Hours Per Response	Total Hours
208.20	35	1.34	47	242	11,374
314.70(b)(3)(ii) 601.12(f)	3	1	3	24	72
208.24(e)	55,000	20	1,100,000	.0014	1540
208.26(a)	1	1	1	4	4
Total					12,990

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–659 Filed 1–11–05; 3:26 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Services; Submission for OMB Review; Comment Request

Request for generic clearance to collect public comments on the proposed standards of care for chimpanzees in the federally supported chimpanzee sanctuary system.

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Research Services, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995 unless it displays a currently valid OMB control number.

Proposed Collection: Title: Request for Generic Clearance to collect public comments on the Proposed Standards of Care Regulations covering chimpanzees in the federally supported Chimpanzee Sanctuary System. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The Chimpanzee Health Improvement, Maintenance, and Protection Act of 2000 (Public Law 106–551) requires the Secretary of the Department of Health and Human Services to develop Standards of Care Regulations for chimpanzees in the Sanctuary System. The Act further requires the Secretary to publish the proposed standards in the **Federal Register** to provide a 60 day period for public comment on the proposed standards. Following receipt of public comments, NCRR/NIH will consider these comments in preparing the final regulations for the sanctuary system. The public includes members of the general population, interested communities (local, regional, and national organizations), and non-profit business entities. Input from the public will allow the NCRR/NIH staff to receive critical review of the standards from different stakeholders, provide a review and analyses of the burden estimated by the government, and help assure that the proposed standards are necessary and current. *Frequency of Response:* One time event. *Affected Public:* Non-profit entities serving as a contractor to the government to operate and maintain the federally supported Chimpanzee Sanctuary System. *Type of Respondents:* Non-profit businesses that possess qualified staff and resources needed to develop, operate, and maintain several hundred chimpanzees. *Estimated number of respondents:* 1–3. *Number Respondents per Response:* 1–3. *Average Burden Hours Per Response:* 15.4. *Burden Hours Requested:* 186.95. Total annualized cost to respondents is estimated at $8412.75. There is no capital, operating, and/or maintenance costs to report.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of respondents*	Annual frequency	Average burden hours	Annual burden hours per response
Reporting:				
§ 9.3(a)(7)(v)(C)	1–3	2	6	12
§ 9.6(c)(6)	1–3	3	2	6

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

	Annual number of respondents*	Annual frequency	Average burden hours	Annual burden hours per response
§ 9.6(d)	1–3	2	0.5	1
§ 9.8(a)(4)	1–3	4	5	20
§ 9.11(a)	**1–3	1	1	12
§ 9.11(b)(1) (iii)	**1–3	6	2	12
§ 9.12(b)	1–3	1	6	6
Subtotal		20		69

* Presently, there is only one (1) respondent, the Contractor for the federally supported Chimpanzee Sanctuary System. The estimates are based upon a maximum of three (3) respondents in the future.
** *See* also § 9.5(c) & 9.5(e).

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of Respondents*	Annual frequency	Average burden hours	Annual burden hours per response
Recordkeeping:				
§ 9.3(a)(7)(v)(c)	1–3	2	2	4
§ 9.3(a)(10)	**1–3	1	8	8
§ 9.3(a)(11)	**1–3	1	8	8
§ 9.4(d)(1)	1–3	1	1	1
§ 9.4(d)(3)	1–3	1	6	6
§ 9.4(c)	1–3	3	8	24
§ 9.5(c)(4)	1–3	1	2	2
§ 9.5 (e)	1–3	1	4	4
§ 9.6(c)(8)	1–3	5	0.05	0.25
§ 9.6(c)(10)	1–3	4	0.1	0.4
§ 9.8(a)(1–4)	1–3	10	0.5	5
§ 9.8(b)	1–3	5	2	10
§ 9.9(a)(3)	1–3	12	0.2	2.4
§ 9.10(a)(1)	1–3	12	0.2	2.4
§ 9.10(a)(2)	1–3	4	3	12
§ 9.10(b)(1)	1–3	3	1.5	4.5
§ 9.11(a)	***1–3	6	1	6
§ 9.12(b)(1)	***1–3	1	3	3
Subtotal		69		102.55

** *See* § 9.5(c) & 9.5(e) also.
*** The reporting requirements for these sections vary because it is estimated that chimpanzees will be shipped 6 times per year. This requires 6 notifications of shipment to the Project Officer. It is estimated that approximately 1 of these shipments might require reporting because of undesirable conditions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of respondents	Annual frequency	Average burden hours	Annual burden hours per response
Disclosure:				
§ 9.3(a)(10) **	1–3	6	0.5	3
§ 9.3(a)(11) **	1–3	1	0.5	1
§ 9.3(a)(13)	1–3	1	1	1
§ 9.4(c)	1–3	1	0.1	0.1
§ 9.4(d)(2)	1–3	1	0.1	0.1
§ 9.5(e)	1–3	1 x event	2	2
§ 9.5(f)(2)	1–3	<1/5	8	1.6
§ 9.6(c)(10)	1–3	4	0.1	0.4
§ 9.9(a)(3)	1–3	10	0.2	2
§ 9.10(a)(1)	1–3	10	0.2	2
§ 9.10(b)(1)	1–3	1	0.2	0.2
§ 9.11(a)	1–3	2	1	2
Subtotal		38.02		15.4
Total	1–3	127.02		186.95

** *See* 9.5(c) & 9.5(e) also.

*** The reporting requirements for these sections vary because it is estimated that chimpanzees will be shipped 6 times per year. This requires 6 notifications of shipment to the Project Officer. It is estimated that approximately 1 of these shipments might require reporting because of undesirable conditions such as inadequate food or water, unexpected death or illness, or any conditions affecting animal welfare.

Request for Comments: Written comments from the public and affected entities are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper monitoring and oversight of the care, welfare, and maintenance of the chimpanzees, (2) the accuracy of the agency's estimate of the burden 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 the information on those who are to respond, including the use of automated, electronic, mechanical, and other technological collection techniques or other forms of information technology.

Direct comments to OMB: Written comments and/or suggestions regarding items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. William Watson, NCRR, 6701 Democracy Boulevard, Room 954, Bethesda, MD 20892–4874, telephone (301) 345–0747 (not a toll-free number), or e-mail; *watsonwm@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: January 11, 2005.

Patricia Newman,

National Center for Research Services Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05–587 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: January 31, 2005.

Open: 2 p.m. to 4 p.m.

Agenda: To review the Clinical Center operating plan, ABCR workgroups and Budget update.

Place: National Institutes of Health, Building 10, 10 Center Drive, 4–2551, CRC Medical Board Room, Bethesda, MD 20892.

Closed: 4 p.m. to 5 p.m.

Agenda: For discussion of personal qualifications and performance the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Place: National Institutes of Health, Building 10, 10 Center Drive, 4–2551, CRC Medical Board Room, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 6–1610, Bethesda, MD 20892, (301) 496–2897,

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: January 6, 2005.

Laverne Y, Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–632 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Naitonal Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: January 18, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: The Panel will discuss the future focuses of the Panel with direction bearing on prepublication manuscripts on Translating Research into Clinical Practice. These manuscripts have been provided by their authors with the understanding that the Panel will not break prepublicaiton embargo conditions.

Place: National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, (Teleconference).

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.deainfo.nic.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research manpower; 93.399, cancer Control, National Institutes of Health, HHS.)

Dated: January 5, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–584 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 10, 2005.

Open: 8:30 a.m. to 1 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0260.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program 03.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: January 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–631 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, January 25, 2005, 9 a.m. to January 25, 2005, 5 p.m., Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852 which was published in the **Federal Register** on January 3, 2005, FR 70 98.

The meeting will be held on the same date from 1 p.m. to 4 p.m. as a telephone conference call at the Neuroscience Center, 6001 Executive Blvd., Rockville, MD. The meeting is closed to the public.

Dated: January 5, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–585 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Male Contraceptives.

Date: January 10, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902–khanh@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: January 5, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–586 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications

and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: February 1–2, 2005.

Closed: February 1, 2005, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Open: February 2, 2005 8 a.m. to 2 p.m.

Agenda: Call to Order, Presentation by NINDS; Task Force on Minority Aging Research Report; Working Group on Program Report; and Program Highlights.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Closed: February 2, 2005, 2 p.m. 2:45 p.m.

Agenda: To review and evaluate the Intramural Research Program.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute of Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D., will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *hhtp://www.nih.gov/nia.naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, aging Research, National Institutes of Health, HHS).

Dated: January 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–629 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S. C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies in Liver Diseases to Ongoing NIDDK Clinical Research Studies.

Date: February 7, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–5452. (301) 594–8894. *matsumotod@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Therapies for NIDDK and Pancreatic Islet.

Date: February 22, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: January 6, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–630 Filed 1–11–05; 8:45 am]

BILLING CODE 4140–01–M

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 information collection activities. 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 (240) 276–1243.

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: National Outcome Measures for Substance Abuse Prevention—(OMB No. 0930–0230)—Revision

The mission of SAMHSA's Center for Substance Abuse Prevention (CSAP) is to decrease substance use and abuse and related problems among the American public. CSAP accomplishes this through field-testing scientifically defensible programs; disseminating comprehensive, culturally appropriate prevention strategies, policies, and systems; and building capacity in states and community-based providers. Data are collected from CSAP grants and contracts where participant outcomes are assessed. The analysis of these data helps determine whether progress is being made in achieving CSAP's mission.

The primary purpose of this proposed data activity is to promote the use among CSAP grantees and contractors of common National Outcome Measures recommended by CSAP as a result of extensive examination and recommendations, using consistent

criteria, by panels of experts. This activity builds on the previous Core Measures Initiative but improves and modifies it in several ways. Specifically, the activity will be reorganized to reflect and support SAMHSA's National Outcome Domains and therefore, ''the National Outcome Measures for Substance Abuse Prevention'' (NOMSAP) is the new title proposed for this activity. The use of consistent measurement for specified outcomes across CSAP-funded projects will improve CSAP's ability to respond to the Government Performance and Results Act (GPRA), the Office of Management and Budget Program Assessment Rating Tool (PART) evaluation, and address goals and objectives outlined in the Office of National Drug Control Policy's Performance Measures of Effectiveness.

SAMHSA does not intend to continue collecting all the information items currently approved by OMB. Consistent with request for comments on minimizing burden, SAMHSA wants to reduce burden on participants in the PRNS program (States, communities, and projects) by limiting information collection to outcome measures that are directly relevant to the National Outcome domains that have been identified by SAMHSA.

However, because OMB approval for SAMHSA's collection of data on these and other measures expires on January 31, 2005, we are asking for an extension of OMB approval for the currently approved measures for CSAP's PRNS programs so that we can continue to collect GPRA data until we finalize the National Outcome Measures for Substance Abuse Prevention.

At this time, SAMHSA is considering the following National Outcome Measures for Substance Abuse Prevention and would like comment on them, including recommended sources. Shaded items require development; for others, as indicated, there is general agreement on candidate measures, with the final measures to be selected from the choices listed based on availability and accuracy.

National outcome	Proposed measure
Abstinence from Drug Use/Alcohol Abuse	30-day substance use (non-use/reduction in use)—adults and youth.
	Perception of drug use as harmful.
	Age of first use.
	Perceived disapproval.
Increased/Retained Employment or Return to/Stay in School	Attendance or suspension and expulsions related to AOD and/or violent behavior—youth.
	Consequences of AOD use—adults.
Decreased Criminal Justice Involvement	AOD-related crime or AOD-related traffic crashes.
Increased Stability in Family and Living Conditions	Family communication—youth.
	Family communication—adults.
Increased Access to Services (Service Capacity)	Number of persons served by age, gender, race, and ethnicity as capacity measure; to develop and add measure of access.
Increased Social Supports/Social Connectedness	Developmental—Coalition measure to be developed.
Cost Effectiveness	Cost averages (bands) for prevention programs—universal, selective, indicated.
Use of Evidence-Based Practices	Total number of evidence-based programs and strategies funded by SPF SIG.
Retention	Developmental—Rates of completion from indicated and selective programs, measure of universal programs to be developed around the sustainability of coalitions.

CSAP *may* suggest other measures at the community and program levels in order to understand and be accountable for the performance of programs in which the State is not the grantee, but SAMHSA will only *require* reporting on the National Outcome Measures. Ultimately, SAMHSA's goal in adopting a common set of National Outcome Measures for Substance Abuse Prevention is to have States, communities and providers report outcomes data according to consistent data protocols that is comparable across States and that is able to be ''rolled up'' from the local and provider level to the State and then to the National level. However, SAMHSA and the States are in discussion about certain instances in which States and communities may use a similar and documented ''proxy measure'' for measuring a particular domain as long as they can demonstrate that the measure tracks the National Outcome Measure for that domain.

The annual burden estimated is that for the grantees to extract the necessary data from their files and provide it to CSAP's Data Coordinating Center. The table below summarizes the maximum estimated time, *i.e.,* if all programs used all of the National Outcome Measures.

ESTIMATES OF ANNUALIZED HOUR BURDEN

CSAP program	No. of grantees	Responses/ grantee	Hours/response	Total hours
FY05				
Knowledge Development				
Club drugs/methamphetamine	22	2	3	132
Fetal Alcohol	6	2	3	36
Workplace	13	2	3	78
Targeted Capacity Enhancement				
HIV/Targeted Capacity	45	2	3	270
SPF Sig	21	2	3	126

ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

CSAP program	No. of grantees	Responses/ grantee	Hours/response	Total hours
FY05 Total	106	—	—	642
FY06				
Knowledge Development				
Club drugs/methamphetamine	22	2	3	132
Fetal Alcohol	6	2	3	36
Workplace	13	2	3	78
Targeted Capacity Enhancement				
HIV/Targeted Capacity	45	2	3	270
SPF Sig	40	2	3	240
FY06 Total	126	—	—	756
FY07				
Knowledge Development				
Club drugs/methamphetamine	22	2	3	132
Fetal Alcohol	6	2	3	36
Workplace	13	2	3	78
Targeted Capacity Enhancement				
HIV/Targeted Capacity	45	2	3	270
SPF Sig	50	2	3	300
FY07 Total	136	—	—	816
3-Year Annual Average	123	—	—	736

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1045, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by March 14, 2005.

Dated: January 6, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–610 Filed 1–11–05; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD17–04–003]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of application submission deadline; request for comments.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound. The current certification for Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) will expire February 28, 2005. This notice announces the procedures governing PWSRCAC's recertification for the period March 1, 2005 through February 28, 2006. This period falls under the comprehensive submission provision of 67 FR 58440. Accordingly, PWSRCAC must construct their submission in a format that both follows the order of, and answers the information specified in 57 FR 62600 guidelines.

DATES: Public comments on PWSRCAC's recertification application must reach the Seventeenth Coast Guard District on or before February 1, 2005.

ADDRESSES: Comments should be mailed to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK 99802–5517. Or, hand carried documents may be delivered to the Juneau Federal Building, 709 West 9th Street, Room 753, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. The application and comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, 709 West 9th Street, Room 753.

A copy of the application will also be available for inspection at the PWSRCAC offices at 3709 Spenard Road, Anchorage, AK and 154 Fairbanks Drive, Valdez, AK between the hours of 8 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number in Anchorage is (907) 277–7222, Valdez (907) 835–5957.

FOR FURTHER INFORMATION CONTACT: For questions on viewing or submitting material to the docket, contact LT Andy Vanskike, Seventeenth Coast Guard District (mor), (907)463–2818.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. We solicit comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aqua cultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. Persons submitting comments should include their names and addresses, identify this

notice (CGD17–04–003), the specific section of the document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802–5517. The request should include reasons why a hearing would be beneficial. If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600) to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732)(the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504) to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440) the Coast Guard changed its policy on recertification procedures for RCACs by requiring applicants to provide comprehensive information every three years. For the two years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification.

At the conclusion of the comment period, February 1, 2005, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on their respective applications. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: December 27, 2004.

James C. Olson,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 05–534 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
093991	Scott L. Sutherland	69 FR 65213; November 10, 2004	December 9, 2004.
094213	Gordon L. Blaser	69 FR 65213; November 10, 2004	December 9, 2004.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
092677	Gregory S. Williamson	69 FR 55445; September 14, 2004	December 7, 2004.
092340	Guy P. Ferraro	69 FR 65214; November 10, 2004	December 21, 2004.

Dated: December 31, 2004.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–541 Filed 1–11–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for Westlake Ranch LLC in Clatsop County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Westlake Ranch LLC and Randy and Tasha Curs (Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested 50-year permit would authorize the incidental take of the threatened Oregon silverspot butterfly (*Speyeria zerene hippolyta*, ''butterfly''), associated with the construction and residential development of 75 lots on approximately 165 acres, five miles north of the city of Gearhart, in Clatsop County, Oregon.

We are requesting comments on the permit application and on whether the proposed Habitat Conservation Plan (HCP) qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments must be received by 5:00 p.m. on February 11, 2005.

ADDRESSES: Comments should be addressed to Kemper McMaster, State Supervisor, Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266, fax number (503) 231–6195 (for further information and instruction on the reviewing and commenting process, see Public Review and Comment section below).

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, Fish and Wildlife Biologist, Fish and Wildlife Service (*see* **ADDRESSES**), or telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed HCP, or EAS, should contact the Service by telephone (*see* **FOR FURTHER INFORMATION CONTACT**) or by letter (*see* **ADDRESSES**). Copies of the subject documents also are available for public inspection during regular business hours at the Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of a fish or wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under section 3 of the ACT as including to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct'' (16 U.S.C. 1538). The Service may, under limited circumstances, issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the ACT as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. The Applicants are seeking a permit for the incidental take of the butterfly during the 50-year term of the permit.

Proposed covered activities under this HCP include development of 75 residential lots on approximately 165 acres by Westlake Ranch LLC and Randy and Tasha Curs. Incidental take of the butterfly would be likely only in areas containing its larval host plant, the early blue violet (*Viola adunca*). The proposed development area on Westlake Ranch LLC contains a total of 12 early blue violet patches. Eight of the proposed residential lots would impact early blue violets. One of the 12 early blue violet patches is about 0.13 acre in size. The other eleven patches are no more than five meters square. Ten of the 11 patches contain less than ten plants each. The remaining patch of the 11 contains greater than 20 plants, but is located outside of the development footprint. No early blue violets would be impacted on the Curs' property.

The proposed minimization and mitigation measures include setting aside a 6.5 acre area in perpetuity that contains a 0.5 acre patch of violets and a 0.55 acre patch of dune goldenrod (*Solidago spathulata*), which is a native plant that serves as an adult butterfly nectar source. The 6.5 acres would be protected under a conservation easement and be managed through annual mowing or other means to reduce competition from non-native plants. The Service would assist in the development of the annual mowing plan and be consulted regarding future management decisions. In addition, the Curs would continue to follow the terms of an existing agreement with the Service to manage a 1.5 acre area for the maintenance of early blue violets for the life of the proposed 50-year permit.

Approval of the HCP may qualify as a categorical exclusion under NEPA, as provided by the Departmental Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and as a ''low effect'' plan as defined by the Habitat Conservation Planning Handbook (Service, November, 1996). Determination of low effect HCPs is based upon the plan having: minor or negligible effects on federally-listed, proposed, or candidate species and their habitats; minor or negligible effects on other environmental values or resources; and, impacts that considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If it is found to qualify as a low-effect HCP, further NEPA documentation would not be required.

Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement, or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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. 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, are available for public inspection in their entirety. If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the Act to the Applicants for take of the butterfly, incidental to

otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: January 6, 2005.

David Wesley,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 05–605 Filed 1–11–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Deleta Earle (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking about 0.23 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Brevard County, Florida (Project). The destruction of 0.23 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). We announce the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before February 11, 2005.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE090970–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE090970–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''*david_dell@fws.gov*''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed above (see **ADDRESSES**). 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 from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

The applicant's residential construction will take place within Section 5, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida. Lot 21, Block 340, Port Malabar Unit 9, is within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2002. Scrub-jays using the subject residential lot and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River Counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat

fragmented by residential development. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays within the City of Palm Bay are unlikely to persist, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

The subject residential parcel lies within a ''high density'' urban setting, and the corresponding territory size of the resident scrub-jays has been estimated to range from 5.2 to 10.8 acres based on average territory sizes of scrub-jay in other urban areas. Data collected from 12 scrub-jay families within the city limits of Palm Bay during the 2000 and 2001 nesting seasons provided information about survival and reproductive success of scrub-jays, but did not attempt to estimate territory sizes. This information indicated that territory boundaries tended to shift from year to year, making calculations of territory size difficult. Similarly, point data do not reliably indicate occupied habitat over time since birds in urban settings tend to move within and between years. Thus, using known territory boundaries and point data to delineate occupied habitat likely underestimates areas occupied by scrub-jays.

To assess whether the Applicant's parcel was within occupied scrub-jay habitat, we calculated the maximum average ''shift'' in territory locations between 2000 and 2001. Based on these estimates, we calculated a maximum average shift of 438 feet between years. We subsequently used the 438 feet as a buffer to surround known territory boundaries and point locations for scrub-jays. We reasoned that 438 feet represented a biologically-based buffer, within which scrub-jays were likely to occur. Application of the 438-foot buffer to known territories and point locations provides a quantitative method to delineate occupied scrub-jay habitat in highly urbanized areas within the city limits of Palm Bay.

The Applicant's residential lot falls within the 438-foot buffer established for known scrub-jay territories and/or point data. The lot provides habitat for foraging, sheltering, and possibly nesting. Accordingly, loss of this habitat due to residential construction will result in the destruction of scrub-jay habitat.

The Applicant agrees to avoid construction during the nesting season if active nests are found onsite, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lot encompasses about 0.23 acre and the footprint of the home, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization is not considered to be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

The Applicant proposes to mitigate for the loss of 0.23 acre of scrub-jay habitat by contributing $3,082 to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $3,082 is sufficient to acquire and perpetually manage 0.46 acre of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

The Service has determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an environmental assessment or environmental impact statement. This preliminary determination may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies as a low-effect plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. The Service does not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has determined that approval of the Plan qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with ''No Surprises'' assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain ''No Surprises'' assurances.

Dated: December 23, 2004.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. 05–611 Filed 1–11–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered marine mammals.

DATES: Written data, comments or requests must be received by February 11, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Smithsonian Marine Station at Fort Pierce, Fort Pierce, FL, PRT–096527.

The applicant requests a permit to acquire blood and tissue samples from captive held Florida manatees (*Trichechus manatus latirostris*) for the purpose of scientific research on dietary isotope fractionation. This notification covers activities to be conducted by the applicant over a one-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: December 31, 2004.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–542 Filed 1–11–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 3, 2005, a proposed Consent Decree in *United States of America* v. *Weyerhaeuser Company,* Civil Action No. 1:05CV0003, was lodged with the United States District Court for the Western District of Michigan.

In this action the United States sought to recover from Weyerhaeuser environmental response costs in connection with a landfill and paper mill at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Portage Counties, Michigan (the ''Site''). In addition, the United States sought a judgment declaring that the Defendant is liable for any further response costs that the United States may incur as a result of releases or threatened releases of hazardous substances at the landfill and paper mill. The Consent Decree provides that Weyerhaeuser shall, *inter alia,* (1) (1) perform the remedy selected by EPA for the landfill area, and investigate and perform the subsequently-selected remedy for the mill property, using at least in part $6.2 million obtained from a bankruptcy settlement; (2) pay all of EPA's costs of overseeing the work; (3) pay approximately $138,000 towards EPA's past costs and $6.2 million into a special account that will be available to EPA to fund remedial investigations and work in the Kalamazoo River, and (4) withdraw its objections to a bankruptcy settlement and its pending appeals from the approval of that settlement.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Weyerhauser Company,* D.J. Ref. 90–11–2–07912/2.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 5th Floor, The Law Building, 330 Iona Ave., Grand Rapids, MI 49503, and at the offices of the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose check in the amount of $31.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–642 Filed 1–11–05; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of

continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 28, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.E-mail: *records.mgt@nara.gov.* FAX: 301–837–3698. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–03–10, 5 items, 4 temporary items). Records relating to research on the effects of potential chemical agents and/or antidotes on various species, including humans. Included are proposed research plans, studies, reports, and personal data on human volunteer subjects. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are research studies on the effects of LSD on human subjects. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium. Records relating to research studies that require a signed consent form from participants will be retained for 75 years.

2. Department of the Army, Agency-wide (N1–AU–05–1, 2 items, 2 temporary items). Family Advocacy Program records relating to preventive activities. Included are such records as family background information, screening forms, family service plans, progress notes, assessments, referrals, and evaluations. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Energy, Bonneville Power Administration (N1–305–04–1, 6 items, 6 temporary items). Records relating to engineering and technical support matters. Included are such records as work orders, project data, and records that relate to the design and construction of static volt-ampere reactive compensation systems. Electronic copies of records created using electronic mail and word processing are also included.

4. Department of Energy, Bonneville Power Administration (N1–305–04–2, 6 items, 6 temporary items). Records relating to personal safety matters, including injuries, fatalities, and safety measures. Included are such records as safety incident investigations and reports as well as audits, studies, tests, and inspection reports pertaining to safety conditions and hazards at agency facilities. Electronic copies of records created using electronic mail and word processing are also included.

5. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–22, 3 items, 3 temporary items.) Office directors' correspondence relating to work accomplishments, personnel needs, and other routine activities. Also included are routine non-controlled Congressional correspondence, other incoming letters, and electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–28, 3 items, 3 temporary items). Copies of Congressional correspondence referred to agency program offices for reply. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–36, 3 items, 3 temporary items). Records of periodic audits of air carriers, including reports, correspondence, and memorandums. Also included are electronic copies of

records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Environmental Protection Agency, Office of Solid Waste and Emergency Response (N1–412–04–8, 5 items, 2 temporary items). Software and inputs of the National Resource Conservation and Recovery Act Information System, an electronic system used to record and track information provided by the regulated community concerning the generation, shipment, treatment, and disposal of hazardous wastes. Proposed for permanent retention are the system data, system documentation, and biennial reports.

9. Executive Office of the President, Office of the United States Trade Representative (N1–364–00–2, 21 items, 17 temporary items). Electronic records and systems used throughout the agency, including such records as calendars and spreadsheets, a legislative referral tracking system, phone system listings, public reading room logs, the Section 301 Trade Act violations system, and a travel system. Also included are electronic copies created using word processing. Proposed for permanent retention are trade negotiation databases and a correspondence tracking system relating to other permanent records, along with related system documentation.

10. National Skill Standards Board, Agency-wide (N1–220–04–9, 3 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the Board's efforts regarding the development of a uniform system of voluntary workplace standards for American industries. Records proposed for permanent retention include recordkeeping copies of committee files, conference and presentation files, the Executive Deputy Director's subject files, hearings records, publications, web page records, organization and budget files, and video recordings of meetings, hearings, and press conferences.

11. U.S. Chemical Safety and Hazard Investigation Board, Office of General Counsel (N1–220–04–8, 19 items, 14 temporary items). Litigation files, records relating to investigations, rulemaking dockets, chronological files, procurement solicitation reviews, inter-agency agreements, annual Freedom of Information Act reports, and other records accumulated by the General Counsel's office. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of such records as legal opinions, orders issued by the Board, and voting records of Sunshine Act meetings are proposed for permanent retention. The agency will notify NARA of potentially permanent investigation and litigation files, which will be appraised on a case-by-case basis.

Dated: January 5, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–575 Filed 1–11–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–324 and 50–325]

Carolina Power & Light Company; Brunswick Steam Electric Plant, Units 1 and 2; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Carolina Power & Light Company (CP&L), now doing business as Progress Energy Carolinas, Inc., has submitted an application for renewal of Facility Operating Licenses, DPR–71 and DPR–62, for an additional 20 years of operation at the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP). BSEP is located in Brunswick County in southeastern North Carolina, near the mouth of the Cape Fear River. The operating licenses for BSEP, Units 1 and 2, expire on September 8, 2016, and December 27, 2014, respectively. The application for renewal was received on October 20, 2004, pursuant to Title 10 of the Code of Federal Regulations Part 54 (10 CFR Part 54). A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on November 18, 2004 (69 FR 67611). A notice of acceptance for docketing of the application and a notice of opportunity for hearing regarding renewal of the facility operating licenses was published in the **Federal Register** on December 6, 2004 (69 FR 70471–70473). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, CP&L submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* In addition, the William Madison Randall Library, located at 601 S. College Road, Wilmington, North Carolina 28403, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the BSEP operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include the no action alternative and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act of 1969 (NEPA) and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS;

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Carolina Power & Light Company, now doing business as Progress Energy Carolinas, Inc;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the BSEP license renewal supplement to the GEIS. The scoping meetings will be held at the Southport City Hall, 201 E. Moore Street, Southport, North Carolina 28461, on Thursday, January 27, 2005. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Richard L. Emch, Jr., by telephone at 1–800–368–5642, extension 1590, or by e-mail to the NRC at *BrunswickEIS@nrc.gov* no later than January 18, 2005. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. The meeting room is on the second floor of the building, and there is no elevator. Therefore, the meeting room is not handicap accessible. Mr. Emch will need to be contacted no later than January 18, 2005, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the BSEP license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by March 11, 2005. Electronic comments may be sent by email to the NRC at *BrunswickEIS@nrc.gov* and should be sent no later than March 11, 2005, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (69 FR 70471). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Emch at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of January 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–591 Filed 1–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meetings

Board Meetings:

February 9, 2005—Las Vegas, Nevada; The U.S. Nuclear Waste Technical Review will meet to discuss technical and scientific issues related to the U.S. Department of Energy's efforts to develop a repository at Yucca Mountain in Nevada.

February 10, 2005—Caliente, Nevada; The U.S. Nuclear Waste Technical Review Board will meet to discuss DOE plans for transporting spent nuclear fuel and high-level radioactive waste to the proposed repository and development of a rail spur from Caliente, Nevada, to the repository site.

Pursuant to its authority under section 5051 of Pub. L. 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, on Wednesday, February 9, and in Caliente, Nevada, on Thursday, February 10, 2005. Technical and scientific issues pertinent to the Department of Energy's (DOE) efforts to develop a repository at Yucca Mountain in Nevada will be discussed on Wednesday in Las Vegas. The meeting in Caliente on Thursday will focus on transportation planning issues and on the development of a rail spur from Caliente to the proposed repository site at Yucca Mountain. Final meeting agendas will be available approximately one week before the meeting dates. They can be obtained from the Board's Web site at *http://www.nwtrb.gov* or by telephone request. The meetings 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.

On Wednesday, 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 Alexis Park Hotel; 375 Harmon Avenue; Las Vegas, NV 89109; 702–796–3300 or 800–582–2228; fax 702–796–3354. On Thursday, the meeting will begin at 10 a.m. and continue until approximately 4:30 p.m. It will be held at the Caliente Youth Center; Highway 93, North #4; Caliente, Nevada 89008.

The meeting on Wednesday will include DOE program and project updates for fiscal year 2005. Updates on technical and scientific topics also will be presented, including the DOE's efforts to integrate elements within the waste management system, the DOE's approach to integrating total system performance assessment with repository design, and the DOE's thermal management strategy for a Yucca Mountain repository.

On Thursday, the meeting will begin with discussions of DOE plans for a national program for transporting spent nuclear fuel and high-level radioactive waste from reactor and defense facilities to the proposed repository and of efforts to integrate transportation activities with waste acceptance and repository operations. After the lunch break, information will be presented on the planning and development of the proposed Nevada rail spur. Local, state, and tribal representatives will present their views on these activities.

Time will be set aside at the end of both days 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 March 18, 2005.

A block of rooms has been reserved at the Alexis Park 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 January 14, 2005, to ensure receiving the meeting rate.

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; 703–235–4473; fax 703–235–4495.

Dated: January 7, 2005.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 05–595 Filed 1–11–05; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of microHelix, Inc., To Withdraw Its Common Stock, No Par Value, and Class B Warrants (To Purchase One Share of Common Stock), From Listing and Registration on the Boston Stock Exchange, Inc., File No. 1–16781

January 6, 2005.

On December 10, 2004, microHelix, Inc., an Oregon corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value, and class B warrants (to purchase one share of common stock) (collectively ''Securities''), from listing and registration on the Boston Stock Exchange, Inc., (''BSE'').

On September 16, 2004, the Board of Directors (''Board'') of the Issuer approved a resolution to withdraw the Issuer's Securities from listing and registration on the BSE. The Issuer states that the following reasons factored into the Board's decision to withdraw the Securities: (i) The nature and extent of trading in the Issuer's Securities on the BSE is limited; (ii) the market value the public markets are applying to the Issuer's Securities; (iii) the lack of institutional investor interest and securities analyst coverage of the Issuer; and (iv) the costs associated with maintaining a listing on the BSE. The Issuer states that the Securities currently trade on the OTC Bulletin Board.

The Issuer states in its application that it has complied with BSE procedures for delisting by complying with all applicable laws in effect in the State of Oregon, the state in which it is incorporated. The Issuer's application relates solely to withdrawal of the Securities from listing on the BSE and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 2, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the BSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

Electronic Comments

• Send an e-mail to rule-comments@sec.gov. Please include the File Number 1–16781 or; 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 1–16781. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–73 Filed 1–11–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–00434]

Issuer Delisting; Notice of Application of the Procter & Gamble Company To Withdraw Its Common Stock, $1.00 Par Value, From Listing and Registration on the National Stock Exchange

January 6, 2005.

On December 16, 2004, the Procter & Gamble Company, an Ohio corporation (''Issuer'') filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $1.00 par value (''Security''), from listing and registration on the National Stock Exchange (''NSX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on December 14, 2004 to withdraw the Issuer's Security from listing and registration on the NSX. The Board states that the following reasons factored into its decision to withdraw the Issuer's Security from the NSX; (i) the Security will remain listed on the New York Stock Exchange, Inc. (''NYSE''), which accounts for considerably higher trading volume than the NSX; (ii) maintenance of multiple listings requires significant time and expense in ensuring compliance with the rules and disclosure requirements of both exchanges; and (iii) the benefits of continued listing on the NSX do not outweigh the incremental cost and administrative burden.

The Issuer stated in its application that it has complied with the NSX's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the NSX, and shall not affect its continued listing on the NYSE or its registration under section 12(b) of the Act.[3]

Any interested person may, on or before February 2, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the NSX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–00434 or;

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 1–00434. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–70 Filed 1–11–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50969; File No. SR–Amex–2004–111]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Extension of the Suspension of Customer Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock®

January 6, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (''Amex Fee Schedules'') to extend the suspension of customer transactions charges for the trading of

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan until January 31, 2005.[3] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The Amex amended the Amex Fee Schedules to provide that the customer transaction charges in QQQQ will be $.0015 per share ($.15 per 100 shares), capped at $100 per trade. The Amex, however, has suspended these customer transaction charges for the first month of trading the QQQQ. The Amex is now proposing to extend the suspension of customer transaction charges to January 31, 2005. The Exchange believes that this fee suspension would encourage competition among markets trading QQQQ and enhance the Amex's competitiveness in trading this security.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–111 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–2004–111. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2004–111 and should be submitted on or before February 2, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the proposed change in customer transaction charges is not unreasonable and should not discriminate unfairly among market participants.

The Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that granting accelerated approval of the proposal would allow the extension of the suspension of customer transactions charges for the trading of QQQQ to coincide with the extension of the suspension of transaction charges for the specialist and registered traders for the trading of QQQQ.[9] Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Amex–2004–

[3] The Exchange also submitted a proposed rule change extending the suspension of the specialist's and registered traders' transaction charges for the trading of QQQQ. *See* File No. SR–Amex–2004–110.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Commission changed this sentence to reflect statutory basis for the proposed rule change pursuant to section 6(b)(4) of the Act, rather than section 6(b)(5). Telephone conversation between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Ted Venuti, Attorney, Division of Market Regulation, Commission (January 4, 2005).

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* File No. SR–Amex–2004–110, *supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

111) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–66 Filed 1–11–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50970; File No. SR–Amex–2004–110]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Suspension of the Specialist's and Registered Traders' Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock®

January 6, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, III below, which items have been prepared by the Exchange. The Amex has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (''Amex Fee Schedules'') to extend the temporary suspension of the specialist's and registered traders' transaction charges for the trading of Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The transaction charges for the specialist and registered traders are $0.0037 ($0.37 per 100 shares) and $0.0038 ($0.38 per 100 shares) respectively. These transaction charges are also subject to a $300 per trade maximum. The Amex, however, has suspended these charges through December 31, 2004. The Amex now proposes to amend the Amex Fee Schedules to suspend the transaction charges for the specialist and registered traders until January 31, 2005. The Exchange believes that this fee suspension would encourage competition among markets trading QQQQ and enhance the Amex's competitiveness in trading this security.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(4) of the Act,[6] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[7]

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] The Commission changed this sentence to reflect statutory basis for the proposed rule change pursuant to Section 6(b)(4) of the Act, rather than Section 6(b)(5). Telephone conversation between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Ted Venuti, Attorney, Division of Market Regulation, Commission (January 4, 2005).

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–110 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–2004–110. 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/*

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–110 and should be submitted on or before February 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50972; File No. SR–Amex–2004–25]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the American Stock Exchange LLC Relating to Revisions to Amex Rule 111

January 6, 2005.

I. Introduction

On April 28, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Amex Rule 111. On May 10, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On June 8, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on October 25, 2004.[5] No comments were received on the amended proposal. This order approves the proposed rule change, as amended.

II. Description

A. Background

The original Act gave the Commission the authority to regulate ''floor trading'' [6] by members of national securities exchanges.[7] In 1964, the Commission exercised this authority by adopting SEC Rule 11a–1—''Regulation of Floor Trading.'' [8] Rule 11a–1 provided, with certain exceptions, that no member of a national securities exchange, while on the floor of such exchange, could initiate any transaction in any security admitted to trading on the exchange, for an account in which such member had an interest. One of the exceptions permitted member transactions for their own account if such transactions were executed in conformity with a Commission-approved exchange plan designed to eliminate floor trading activities that were not beneficial to the market.

Shortly after the adoption of SEC Rule 11a–1, the Exchange submitted a floor trading plan (''Plan'').[9] As part of the Plan, the Exchange proposed Amex Rules 110, 111, and 112, which (1) created a registered equity trader program, and (2) incorporated the trading exemptions found in SEC Rule 11a–1(b)(1) through (b)(6). On July 23, 1964, the Commission approved the Exchange's Plan,[10] together with revisions to the Plan that exempted from the prohibitions contained in SEC Rule 11a–1 and the Plan: (1) Transactions in bonds, (2) hedging transactions by rights specialists in the underlying security, and (3) certain block transactions.[11]

Generally, Amex Rule 110 prohibits any member from initiating transactions while on the floor for an account in which such member has an interest unless such member is registered as a ''Registered Trader.'' Registered Traders are limited in the transactions they may initiate on the floor under Amex Rule 111. For example, Registered Traders must meet stabilization tests, may not act as a broker for off-floor orders in stocks in which such Registered Trader has initiated transactions for his own account, and may not retain priority over off-floor orders when establishing or increasing positions in his own account. Amex Rule 111(f)(1) through (6) exempts certain member transactions from the Registered Trader requirements set forth in Amex Rules 110 and 111 and reflects the exemptions from Rule 11a–1(b)(1) through (6). For example, transactions by registered specialists in their specialty stock, transactions by odd-lot dealers, and bona fide arbitrage transactions of members are not subject to the restrictions set forth in Amex Rules 110 and 111.

In 1975, Congress substantially amended Section 11(a) of the Act [12] by extending the general prohibition on member floor trading embodied in SEC Rule 11a-1 [13] to off-floor member trading. Specifically, section 11(a) of the Act prohibits, subject to certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Bill Floyd-Jones, Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 7, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the proposed rule language, and provided additional explanation in the purpose section of the proposed rule change.

[4] *See* Letter from Bill Floyd-Jones, Counsel, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated June 7, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange added a definition of ''bona fide hedge'' to the text of the proposed rule change. In Amendment No. 2, the Exchange also reprinted pages 33—35 of Securities Exchange Act Release No. 15533 (January 29, 1979) as proposed Commentary .13 to the text of the proposed rule change.

[5] *See* Securities Exchange Act Release No. 50552 (October 15, 2004), 69 FR 62308.

[6] The Commission has defined ''floor trading'' as trading by members of national securities exchanges for their own account while personally present on the trading floor of an exchange. *See* Securities Exchange Act Release No. 7290 (April 9, 1964), 29 FR 5168 (April 15, 1964).

[7] As originally adopted, section 11(a) of the Act provided:

The Commission shall prescribe such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, (1) to regulate or prevent floor trading by members of national securities exchanges, directly or indirectly for their own account or for discretionary accounts, and (2) to prevent such excessive trading on the exchange but off the floor by members, directly or indirectly for their own account, as the Commission may deem detrimental to the maintenance of a fair and orderly market. It shall be unlawful for a member to effect any transaction in a security in contravention of such rules and regulations, but such rules and regulations may make such exemptions for arbitrage transactions, for transactions in exempted securities, and within the limitations of subsection (b) of this section, for transactions by odd-lot dealers and specialists, as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

[8] *See* Securities Exchange Act Release No. 7330 (June 2, 1964), 29 FR 7380 (June 6, 1964).

[9] Securities Exchange Act Release No. 7359 (June 30, 1964), 29 FR 9344 (July 8, 1964).

[10] Securities Exchange Act Release No. 7374, 29 FR 10632 (July 30, 1964).

[11] Securities Exchange Act Release No. 7375 (July 23, 1964), 29 FR 10632 (July 30, 1964).

[12] *See* 15 U.S.C. 78k(a).

[13] 17 CFR 240.11a–1.

exceptions, any member of an exchange from effecting any transaction on such exchange for its own account, the account of an associated person or an account with respect to which it or an associated person thereof exercises investment discretion. The statutory exemptions to the general prohibition found in section 11(a)(1) of the Act include, among other things, bona fide arbitrage and bona fide hedge transactions. These exceptions reflect Congress' belief that these types of trading activities either contributed to the maintenance of fair and orderly markets, or at least had not given rise to serious abuse.[14]

B. Proposed Rule Change

The Exchange proposes to amend Amex Rule 111 to conform it to the 1975 amendments to section 11(a) of the Act by allowing members registered as options specialists and registered options traders (''ROTs'') to initiate, while on the Amex floor, bona fide hedging transactions for their accounts in Amex listed securities and to allow members registered as equity specialists to initiate, while on the Amex floor, bona fide hedging transactions for their accounts in options traded on Amex. Currently, as noted above, Amex members can execute transactions on the floor for accounts in which they have an interest only if they are Registered Traders. The proposed rule change would permit equity specialists, options specialists, and ROTs to initiate bona fide hedge transactions without having to register as Registered Traders and without being subject to the limitations set forth in Amex Rules 110 and 111.[15]

Under the Exchange's proposed rule change, options specialists and ROTs could give an order for their account directly to an Amex broker on the floor for a security underlying an option in which they are registered for the purpose of acquiring or liquidating a bona fide hedge position through a trade on the Exchange. Similarly, Amex proposes to permit equity specialists (subject to Amex Rule 175, which regulates option transactions by equity specialists) to give an order for their account directly to an Amex broker on the floor for a security overlying an equity in which they are registered for the purpose of acquiring or liquidating a bona fide hedge position through a trade on the Exchange.

The proposed rule would exempt bona fide hedge transactions in securities underlying options by option specialists and ROTs from the requirements of Amex Rule 110, and paragraphs (a) through (e) of Amex Rule 111. Likewise, the proposed rule would exempt bona fide hedge transactions in options overlying securities by equity specialists from the requirements of Amex Rules 110, 111, and 958 (which regulates the transactions of ROTs).

The Exchange also proposes under Amex Rule 111(i) to add a definition of ''bona fide hedge'' which shall have the meaning found in SEC Rule 11a1–3(T) and in pages 33–35 of the release adopting that rule.[16] The Exchange further proposes to provide a reprint of pages 33–35 of the 1979 Release in proposed Commentary 13 of Amex Rule 111.

Brokers who receive orders from equity specialists, options specialists or ROTs would be required to prepare a record of any bona fide hedge order given to them,[17] and specialists and ROTs who give bona fide hedge orders to brokers would have to prepare and submit to the Exchange a record of all such orders and transactions effected for an account in which they have an interest.[18]

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[19] and, in particular, the requirements of section 6(b)(5) of the Act,[20] which requires that the rules of a national securities exchange be designed to, among other things, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade. In addition, the Commission believes that the Amex's proposal is consistent with section 11(a) of the Act.

Specifically, Amex proposes to allow its members to effect a certain type of proprietary transaction on the Amex floor that is currently permitted under the Act. Section 11(a)(1)(D) of the Act allows members of a national securities exchange to engage in ''any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security.''[21] The Commission has defined bona fide hedge transactions for the purposes of section 11(a)(1)(D) of the Act.[22] In the 1979 Release, the Commission stated that, while the application of the term is largely a matter of custom and practice, the term bona fide hedge implied ''an appreciable offset of risk, for all or part of the position being hedged.''[23] The Commission continued, in the 1979 Release, to describe whether particular combinations of stock and options positions would result in risk reduction, the timing of hedging transactions, and the liquidation of hedge positions.[24]

Amex has proposed to adopt the Commission's definition of bona fide hedge set forth in the 1979 Release and in Rule 11a1–3(T). Accordingly, the Commission believes that Amex's proposed definition is consistent with the requirements of the Act. As noted above, the Commission's definition is specific as to the types and sizes of transactions that can be considered bona fide hedges, the timing of executing hedge transactions and liquidating hedge positions. Amex must ensure that the bona fide hedge transactions executed by specialists and ROTs comply with these requirements for Section 11(a) exemption purposes.[25] Amex must also ensure that equity specialists continue to comply with Amex Rule 175, which regulates option transactions by equity specialists.

The Commission notes that the Exchange's proposed rule change does not alter the general prohibition on side-by-side trading[26] and integrated market

[14] *See* Securities Act Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 99 (1975).

[15] Amex Rules 110 and 111 apply to options transactions pursuant to Amex Rules 950(a) and 958.

[16] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, 6090–6091 (January 31, 1979) (''1979 Release'').

[17] *See* Amex Rule 153.

[18] *See* Amex Rules 957 and 175, Guidelines for Specialists' Specialty Option Transactions Pursuant to Rule 175, paragraph (j).

[19] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k(a)(1)(D). The Commission also has extended the bona fide hedge definition to options to options hedging. *See* 17 CFR 240.11a1–3(T).

[22] *See* 1979 Release, *supra* note 16, at 6090–6091.

[23] *See id.* at 6090.

[24] *See id.* at 6090–6091.

[25] For example, in the 1979 Release, the Commission noted that to the extent that a position more than offsets the risk of the position to be hedged, the excess position would not be part of a bona fide hedge for the purposes of Section 11(a)(1)(D) of the Act. *See id.* at 6091.

[26] ''Side-by-side trading'' refers to the trading of securities and related derivative products at the same location, though not necessarily by the same specialist. *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233, note 9 (July 23, 2002).

making[27] on the Exchange.[28] Accordingly, equity specialists may not act as specialists or ROTs in options overlying the stocks in which they are registered, and options specialists and ROTs may not act as specialists in the securities underlying the options in which they are registered. Furthermore, Amex may not move the location of stock and options trading posts such that related stocks and options are traded at the same or adjacent locations on the floor.[29]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2004–25), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–90 Filed 1–11–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50962; File No. SR–CBOE–2004–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 Thereto Relating to the Customer Large Trade Discount Program

January 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2], notice is hereby given that on December 21, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. On January 3, 2005, CBOE amended the proposed rule change (''Amendment No. 1'').[3] The proposed rule change, as amended, has been filed by CBOE as a non-controversial filing pursuant to Rule 19b–4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fee Schedule to make permanent its Customer Large Trade Discount Program (''Program'') and to lower the contract volume cap beyond which customer transaction fees for its Dow Jones index options would not be assessed. The text of the proposed rule change, as amended, is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2003, the Exchange established a six-month pilot program providing a customer large trade discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for most CBOE index options.[5] The Program has been extended twice and is now due to expire on December 31, 2004.[6] The Exchange proposes to make the Program permanent. According to CBOE, the results of the Program during the pilot period reflect significant savings for CBOE customers as well as a significant increase in the quantity of large orders in the subject options classes executed on the Exchange.

The Exchange also proposes lowering the contract volume fee cap for options on the Dow Jones Industrial Average (including options on the Diamonds) to 5,000 from 7,500, to encourage larger orders be sent to the Exchange in these products. Otherwise, all other terms of the Program would remain unchanged. The Exchange intends to implement the lower contract volume fee cap for the Dow Jones index options on January 1, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] 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

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[27] ''Integrated market making'' refers to the trading of securities and related derivative products by the same specialist or specialist firm. *See id.* at 48233, note 10.

[28] The Commission notes that, currently, specified exchange-traded funds and trust issued receipts and their related options may be traded on the Amex by the same Exchange specialist or specialist firm without informational or physical barriers or other restrictions. *See id.* at 48236.

[29] *See* Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39956 (October 7, 1988).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE amended the proposed rule change to revise Note 2 to the Exchange's Fee Schedule to delete the reference to the dates that the pilot program with respect to the Customer Large Discount Trade Program was in effect.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003) (SR–CBOE–2003–26).

[6] *See* Securities Exchange Act Release No. 49118 (January 22, 2004), 69 FR 4335 (January 29, 2004) (SR–CBOE–2003–60), and Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004) (SR–CBOE–2004–38).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder. In addition, the Exchange provided the Commission with 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 the filing of the proposed rule change as required by Rule 19b–4(f)(6).[13]

The Exchange has requested that the Commission waive the 30-day operative delay.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay will allow customers to continue to benefit from the large trade discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for most CBOE index options, which otherwise would expire on December 31, 2004. For this reason, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–88 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–CBOE–2004–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–88 and should be submitted on or before February 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–592 Filed 1–11–05; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Id.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes of only accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 3, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50967; File No. SR–CBOE–2004–72]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Incorporated Relating to the SizeQuote Mechanism

January 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. On December 22, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a SizeQuote Mechanism for the execution of large-sized orders in open outcry. The text of the proposed rule change is below. Proposed new language is in *italics*.

* * * * *

Rule 6.74 ''Crossing Orders''

(a)–(e) No change.

(f) Open Outcry ''SizeQuote'' Mechanism

(i) SizeQuotes Generally: The SizeQuote Mechanism is a process by which a floor broker (''FB'') may execute and facilitate large-sized orders in open outcry. Floor brokers must be willing to facilitate the entire size of the order for which they request SizeQuotes (the ''SizeQuote Order''). The appropriate Market Performance Committee shall determine the classes in which the SizeQuote Mechanism shall apply. The SizeQuote Mechanism will operate as a pilot program which expires [insert date one year from date of approval].

(A) Eligible Order Size: The appropriate MPC shall establish the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety. *See* e-mail message from Stephen Youhn, Assistant Secretary, CBOE, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on January 5, 2005.

eligible order size however such size shall not be less than 250 contracts.

(B) In-crowd Market Participants: The term ''in-crowd market participants'' (''ICMPs'') shall be as defined in CBOE Rule 6.45A.

(C) Public Customer Priority: Public customer orders in the electronic book have priority to trade with a SizeQuote order over any ICMP providing a SizeQuote response at the same price as the order in the electronic book.

(D) DPM Participation Rights: The DPM participation entitlement shall not apply to SizeQuote transactions.

(E) FBs may not execute a SizeQuote order at a price inferior to the national best bid or offer (''NBBO.'') Unless a SizeQuote request is properly canceled in accordance with paragraph (iv), a FB is obligated to execute the entire SizeQuote order at a price that is not inferior to the NBBO in situations where there are no SizeQuote responses received or where such responses are inferior to the NBBO.

(ii) SizeQuote Procedure: Upon request by a FB for a SizeQuote, ICMPs may respond with indications of the price and size at which they would be willing to trade with a SizeQuote order. After the conclusion of time during which interested ICMPs have been given the opportunity to provide their indications, the FB must execute the SizeQuote order with ICMPs and/or with a firm facilitation order in accordance with the following procedures:

(A) Executing the Order at ICMP's Best Price: ICMPs that provided SizeQuote responses at the highest bid or lowest offer (''best price'') have priority to trade with the SizeQuote Order at that best price. Allocation of the order among ICMPs shall be prorata, up to the size of each ICMP's SizeQuote response. The FB must trade at the best price any contracts remaining in the original SizeQuote Order that were not executed by ICMPs providing SizeQuote responses.

(B) Executing the Order at a Price that Improves upon ICMP's Price by One Minimum Increment: ICMPs that provided SizeQuote responses at the best price (''eligible ICMPs'') have priority to trade with the SizeQuote Order at a price equal to one trading increment better than the best price (''improved best price''). Allocation of the order among eligible ICMPs at the improved best price shall be prorata, up to the size of each eligible ICMP's SizeQuote response. The FB must trade at the improved best price any contracts remaining in the original SizeQuote Order that were not executed by eligible ICMPs.

(C) Trading at a Price that Improves upon ICMP's Price by More than One Minimum Increment: A FB may execute the entire SizeQuote order at a price two trading increments better than the best price communicated by the ICMPs in their responses to the SizeQuote request.

(iii) Definition of Trading Increments: Permissible trading increments are $0.05 for options quoted below $3.00 and $0.10 for all others. In classes in which bid-ask relief is granted pursuant to CBOE Rule 8.7(b)(iv), the permissible trading increments shall also increase by the corresponding amount. For example, if a series trading above $3.00 has double-width bid-ask relief, the permissible trading increment for purposes of this rule shall be $0.20.

(iv) It will be a violation of a FB's duty of best execution to its customer if it were to cancel a SizeQuote order to avoid execution of the order at a better price. The availability of the SizeQuote Mechanism does not alter a FB's best execution duty to get the best price for its customer. A SizeQuote request can be canceled prior to the receipt by the FB of responses to the SizeQuote request. Once the FB receives a response to the SizeQuote request, if he/she were to cancel the order and then subsequently attempt to execute the order at an inferior price to the previous SizeQuote response, there would be a presumption that the FB did so to avoid execution of its customer order in whole or in part by others at the better price.

Interpretations and Policies

No change.

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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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE rules impose several obligations upon floor brokers (''FBs''), including the requirement in paragraph (a) of CBOE Rule 6.73, ''Responsibilities of Floor Brokers,'' that a FB handling an order use due diligence in executing that order at the best price(s) available. CBOE Rule 6.73.01 supplements this general requirement by requiring FBs to ascertain whether a better price than those currently displayed in the limit order book is available in the trading crowd. In order to assist FBs in their exercise of due diligence, the Exchange believes it would be beneficial to adopt new procedures governing the execution of certain large-sized orders, which by virtue of their large size often require specialized handling. The purpose of this rule filing, therefore, is to adopt on a one-year pilot basis a trading procedure mechanism called the SizeQuote Mechanism for use by FBs in their representation of large-sized orders in open outcry.[4]

The SizeQuote Mechanism is a process by which a FB, in his/her exercise of due diligence to execute orders at the best price(s), may execute and facilitate large-sized orders in open outcry. For purposes of this rule, the minimum qualifying order size is 250 contracts[5] and FBs must stand ready to facilitate the entire size of the order for which they request SizeQuotes (the ''SizeQuote Order''). The SizeQuote procedure works as follows:

A FB holding an order for at least 250 contracts must specifically request a SizeQuote from in-crowd market participants (''ICMPs'').[6] Upon such a request by a FB, ICMPs may respond with indications of the price and size at which they would be willing to trade with a SizeQuote Order. ICMPs may respond with any size and price they desire (subject to the rules governing the current market maker obligation requirements) and as such are not obligated to respond with a size of at least 250 contracts.[7] The proposal provides that FBs may not execute a SizeQuote Order at a price inferior to the NBBO. Proposed paragraph (f)(i)(E)

[4] The Exchange in the original rule filing proposed including the rule text describing the SizeQuote Mechanism in CBOE Rule 6.73, ''Responsibilities of Floor Brokers.'' Amendment No. 1 relocates the same text to CBOE Rule 6.74, ''Crossing Orders,'' with the technical changes as described herein.

[5] The appropriate Exchange committee will determine the classes in which SizeQuote operates and may vary the minimum qualifying order size, provided such number may not be less than 250 contracts.

[6] Pursuant to CBOE Rule 6.45A, ''Priority and Allocation of Trades for CBOE Hybrid System,'' in-crowd market participants include in-crowd Market-Makers, an in-crowd DPM, and a floor broker representing orders in the trading crowd.

[7] CBOE Rule 8.7(d), ''Market Making Obligations Applicable to Hybrid Classes,'' requires Market-Makers to respond to any request by a FB for a market with a legal-width (as defined in CBOE Rule 8.7(b)(iv)), 10-contract minimum size quote in classes trading on the CBOE Hybrid System.

clarifies that unless a SizeQuote request is properly canceled in accordance with paragraph (iv), a FB is obligated to execute the entire SizeQuote Order at a price that is not inferior to the NBBO in situations where there are no SizeQuote responses received or where such responses are inferior to the NBBO.

After the conclusion of time during which interested ICMPs have been given the opportunity to provide their indications, the FB will execute the SizeQuote Order he is holding with ICMPs or with a facilitation order, or both, in accordance with the following procedures: [8]

Executing the SizeQuote order at ICMP's best price: ICMPs that provided SizeQuote responses at the highest bid or lowest offer (''best price'') have priority to trade with the SizeQuote Order at that best price. For example, assume a FB requests a SizeQuote and ICMPs respond with a market quote of $1.00—1.20 for 1,000 contracts. This quote constitutes the ''best price'' and those ICMPs that responded have priority at those prices.[9] If the FB chooses to trade at either of those prices, the SizeQuote Order will be allocated pro-rata to those ICMPs that responded with a quote at the best price, up to the size of their respective quotes.[10] If in the above example the SizeQuote Order is for more than 1,000 contracts, the FB *must* trade the balance with a facilitation order at the best price. ICMPs that did not respond to the SizeQuote request would not be eligible to participate in the allocation of this trade.

Executing the order at a price that improves upon ICMP's price by one minimum increment: [11] ICMPs that provided SizeQuote responses at the best price (''eligible ICMPs'') have priority to trade with the SizeQuote Order at a price equal to one minimum increment better than the best price (''improved best price''). Accordingly, using the example above, eligible ICMPs, if they desire, have priority at prices of $1.05 and $1.15 of up to 1,000 contracts.[12] If the FB chooses to trade at either of those prices, the SizeQuote Order will be allocated pro-rata at the improved best price to those eligible ICMPs that responded with a quote at the best price, up to the size of their respective quotes. If the SizeQuote Order is for more than 1,000 contracts, the FB *must* trade the balance with a facilitation order at the improved best price. ICMPs that did not respond to the SizeQuote request would not be eligible to participate in the allocation of this trade.

Trading at a price that improves upon ICMP's price by more than one minimum increment: A FB may execute the entire SizeQuote Order with a facilitation order at a price two minimum increments better than the best price communicated by the ICMPs in their responses to the SizeQuote request. Using the example above, a FB could trade the SizeQuote Order with a facilitation order at $1.10. ICMPs would not be able to participate in the trade at that price.

The Exchange also proposes to adopt new paragraph (iv) to explicitly state that it will be a violation of a FB's duty of best execution to its customer if it were to cancel a SizeQuote Order to avoid execution of the order at a better price. The availability of the SizeQuote Mechanism does not alter a FB's best execution duty to get the best price for its customer. A SizeQuote request can be canceled prior to the receipt by the FB of responses to the SizeQuote request. Once the floor broker receives a response to the SizeQuote request, if he/she were to cancel the order and then subsequently attempt to execute the order at an inferior price to the previous SizeQuote response, there would be a presumption that the FB did so to avoid execution of its customer order in whole or in part by others at the better price.

The Exchange represents that it will provide to the Commission at the end of the pilot period a report summarizing the effectiveness of the SizeQuote program. Pending a report that indicates that the SizeQuote program has been successful, the Exchange anticipates submitting a rule filing that either requests extension of the SizeQuote program or permanent approval of the pilot.

The Exchange believes that the SizeQuote proposal provides a well-balanced mechanism that enhances the trading crowd's ability to quote competitively and participate in open outcry trades while at the same time it creates a process that gives greater certainty to FBs in the execution of large orders. Under the proposal, ICMPs not only will have priority at the price of the quote they give in response to a SizeQuote request, but they also will have priority, if they want it, at a price that is one trading increment better than their quote. FBs will now have more certainty in that ICMPs will have one opportunity to respond with a quote response and if they do not, they will not participate in the trade. Moreover, once an ICMP gives his/her best price (*i.e.*, SizeQuote response), he/she may not subsequently change the terms of that response after the FB announces its intention to trade, although the ICMP will have priority at a price that is one trading increment better than his/her quote. This further enhances ICMPs' incentives to quote competitively.

The Exchange also believes that the proposal enhances an ICMP's incentive to quote competitively by giving complete priority at not only his/her price but also at one trading increment better than his/her SizeQuote response. For these reasons, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[8] The FB will execute the SizeQuote Order either with ICMPs or with a firm facilitation order, or both, in accordance with the requirements of paragraph (ii).

[9] Public customers in the electronic book have priority to trade with a SizeQuote Order over any ICMP providing a SizeQuote response at the same price as the order in the electronic book. *See* proposed CBOE Rule 6.74(f)(i)(C). This example assumes there are no public customer orders at the SizeQuote response price.

[10] There will be no DPM participation entitlement in SizeQuote trades, even if the DPM is among those ICMPs quoting at the best price.

[11] Minimum increments are governed by CBOE Rule 6.42, ''Minimum Increments for Bids and Offers.'' The term ''minimum increment'' is synonymous with ''trading increment.''

[12] Obviously, there is no obligation requiring an ICMP to trade at a price that is better than his/her verbal quote.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–72 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–CBOE–2004–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–72 and should be submitted on or before February 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–67 Filed 1–11–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50964; File No. SR–CBOE–2004–82]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Rule 17.10(d)—Review of Decision Not To Initiate Charges

January 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2004 the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 17.10(d)—Review of Decision Not to Initiate Charges by transferring the authority to review the Exchange's Business Conduct Committee's (''BCC'') decision to decline to authorize the issuance of a Statement of Charges from the President of the Exchange to the Regulatory Oversight Committee (''ROC'') and by changing the time to assess such a review from 30 days to 45 days. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 17.10(d) provides a ''check and balance'' process to ensure that in situations where the BCC declines to authorize the issuance of a Statement of Charges that is recommended by the Exchange staff, the President of the Exchange has an opportunity to review the BCC's decision and refer the matter to the Board of Directors.

The Exchange is seeking two specific modifications to this rule. First, the Exchange seeks to shift the review authority from the President of the Exchange to the Exchange's ROC. Given the ROC's oversight of regulation, the Exchange believes that it is appropriate to shift the reviewing authority from the President to the ROC. Additionally, the Exchange believes that this amendment will reduce the appearance of any conflict of interest. As a result, the Exchange believes that this transfer of reviewing authority from the President to the ROC further enhances the independence of CBOE's regulatory structure.

Second, the Exchange seeks to amend and clarify the time frame of review from 30 to 45 days, commencing from the date the Exchange serves the subject of the alleged violation with notice of a decision by the Business Conduct Committee pursuant to Exchange Rule 17.4(a) not to initiate the charges that have been recommended by Exchange staff. The Exchange believes that in transferring this review authority to the ROC, additional time may be needed to accommodate the busy schedules of the members of the ROC and to provide the members of the ROC with greater scheduling flexibility.

The Exchange believes that by transferring the reviewing authority from the President to the ROC and by

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amending and clarifying the time to assess such a review, CBOE will further enhance the independence of its regulatory structure.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of section 6(b)(5) of the Act [4] in particular, by promoting just and equitable principles of trade, and protecting investors and the public interest. The proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by further enhancing the independence of the Exchange's disciplinary and regulatory process.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which the self-regulatory organization consents, the Commission will (a) by order approve such proposed rule change or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–82 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–CBOE–2004–82. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–82 and should be submitted on or before February 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–72 Filed 1–11–05; 8:45 am]

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50965; File No. SR–FICC–2004–06]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Institute Fines for Late Payment of Cash Obligations and Margin and To Institute Informal Hearing Procedures for Fine Disputes

January 5, 2005.

I. Introduction

On March 18, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on April 16, 2004, amended proposed rule change SR–FICC–2004–06 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 15, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to institute at the MBSD (i) fines for the late payment of cash obligation items and margin deficits and (ii) informal procedures for disputed MBSD fines.

1. Fines for Late Payments

The MBSD has for some time imposed fees in order to promote greater compliance with its cash obligation and margin payment deadlines.[3] Fees differ from fines in that fines must be reported by FICC to the Commission. FICC believes that, consistent with the practice of the Government Securities Division (''GSD'') of FICC, assessments for late payment of margin and cash obligation items should be categorized as fines. FICC believes that this change will provide a greater incentive for participant compliance with appropriate payment timeframes which will reduce risk to all MBSD participants.

2. Procedures Relating to Disputed Fines

The rules of the MBSD currently contain procedures whereby a participant can dispute any fine

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50642 (November 5, 2004), 69 FR 65662.

[3] Currently, the MBSD rules state that failure to pay a cash settlement obligation will result in the assessment of a fine. However, the MBSD Schedule of Charges refers to such charges as ''fees,'' and they have been processed as fees by MBSD in the past.

assessment through a formal appeal process. FICC believes that, consistent with the practice of the GSD, the fine process will be more effective and equitable and will provide participants with additional due process if an initial less formal dispute process is also included in MBSD's rules. The initial dispute process will be utilized by participants prior to availing themselves of the formal appeal process. A participant that becomes subject to a fine will have the opportunity within seven calendar days to dispute the fine by explaining in writing any mitigating circumstances that contributed to the participant's infraction and to request a fine waiver. Based on such written documentation provided by the participant, management will have the discretion to waive a fine if it believes that sufficient mitigating circumstances have been shown by the participant. If management waives a fine, it will have to inform the Membership and Risk Management Committee (''Committee'') at the next regularly scheduled Committee meeting and will have to explain its reasons for doing so. The Committee will then have the opportunity to overrule management's action with respect to the waiver. If management chooses to not waive a fine or if its waiver is overruled by the Committee, the participant will have the right to pursue the formal hearing process currently provided for in the MBSD's Rules.

FICC will also make parallel changes with respect to the fine dispute process to the MBSD's EPN rules.

In addition, FICC proposed certain technical changes to the MBSD's Schedules of Charges to (i) delete references to ''MBSCC'' and replace them with references to ''MBSD'' and (ii) eliminate obsolete fees which are no longer being charged by the MBSD.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions.[4] The Commission finds that FICC's proposed rule change is consistent with this requirement because it is designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by (i) encouraging participants to make timely payments of cash obligation items and margin to MBSD and (ii) clearly setting forth in MBSD's rules the informal procedures for disputing fines which should provide members with a more efficient and less burdensome method for the possible resolution of disputed fines before a full hearing takes place.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2004–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–68 Filed 1–11–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50977; File No. SR–NASD–2004–189]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting and Compliance Engine (''TRACE'') Fees and Implementation Date of Stage Two of Dissemination of TRACE Transaction Information

January 6, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2004, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I and II below, which items have been prepared by NASD. The NASD 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. 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 amend Rule 7010(k) to terminate the Bond Trade Dissemination Service (''BTDS'') Professional Delayed-Time Data Display Fee pilot program and the BTDS Non-Professional Real-Time Data Display fee, relating to Trade Reporting and Compliance Engine (''TRACE'') transaction data fees, and to amend the implementation date of certain amendments to NASD Rule 6250, relating to TRACE transaction data dissemination and approved by the SEC in SR–NASD–2004–094 (designated as ''Stage Two'' of the implementation of SR–NASD–2004–094) from February 1, 2005 to February 7, 2005. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (j) No change.

(k) Trade Reporting and Compliance Engine

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (''TRACE''):

System fees	Transaction reporting fees	Market data fees
Level I Trade Report Only Web Browser Access—$20/month per user ID Level II Full Service Web Browser Access—$80/month per user ID.	Trades up to and including $200,000 par value—$0.475/trade; Trades between $201,000 and $999,999 par value—$0.002375 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.375/trade.	BTDS Professional Real-Time Data Display—$60/month per terminal, except

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[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).

System fees	Transaction reporting fees	Market data fees
CTCI/Third Party—$25/month/per firm	Cancel/Correct—$1.50/trade "As of" Trade Late—$3/trade	[BTDS Professional Delayed-Time Data Display—$15/month per terminal]. BTDS Internal Usage Authorization—$500/month per application/service for Real-Time and Delayed Time Data. BTDS External Usage Authorization—$1,000/month per application/service for Real-Time and Delayed-Time Data. BTDS Non-Professional Real-Time Data Display—*No charge* [$1/month per terminal].

(1) through (2) No change.

(3) Market Data Fees

Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD in one or more of the following ways for the charges specified, *as applicable.* Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

(A) Professional Fees

Professionals may subscribe for the following:

(i) No change.

(ii) *Reserved.* [For a pilot period commencing February 1, 2004, and lasting through July 31, 2005, BTDS Professional Delayed-Time Data Display Fee of $15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. Subject to the execution of appropriate agreements with NASD, certain summary market information of Delayed-Time TRACE transaction data may be published or distributed by newspapers, press associations, newsletters, or similar media sources without charge.]

(iii) through (iv) No change.

(B) Non-Professional Fees

[The charge to be] *There shall be no charge* paid by a non-professional for [each terminal] receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE. [shall be $1.00 per month, per terminal.]

(C) through (D) No change.

(l) through (u) 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, NASD 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. 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 amend Rule 7010(k) to terminate the BTDS Professional Delayed-Time Data Display Fee pilot program and the BTDS Non-Professional Real-Time Data Display fee. Both fees are for TRACE transaction information. In addition, NASD is proposing to change the implementation date of Stage Two of SR–NASD–2004–094. Implementation of Stage Two will make operative certain amendments to NASD Rule 6250 that provide for the delayed dissemination of information on designated transactions in TRACE-eligible securities.

TRACE Fees

a. BTDS Professional Delayed-Time Data Display Fee Pilot Program

NASD currently has in place a pilot program that charges for TRACE transaction information provided to professionals on a delayed basis. The charge for this pilot program is the BTDS Professional Delayed-Time Data Display Fee of $15 per month and is imposed per terminal for each interrogation or display device receiving the delayed data. The pilot program commenced on February 1, 2004.[5]

NASD has recently begun a comprehensive review of TRACE fees. As part of this review, NASD has determined to terminate the BTDS Professional Delayed-Time Data Display Fee and service because the demand for the service was limited.

b. BTDS Non-Professional Real-Time Data Display Fee

NASD currently charges a minimal fee of $1.00 per month/per terminal for its BTDS Non-Professional Real-Time Data Display service, which allows non-professionals to view TRACE data on a real-time basis.[6] NASD is proposing to eliminate the $1.00 BTDS Non-Professional Real-Time Data Display Fee for individual investors who are users of this real-time TRACE market data.

Wider distribution of TRACE data is a cornerstone of a broader effort to better educate individual investors about the corporate bond market. NASD proposes to eliminate the fee to remove any financial barriers to the broad-based distribution of TRACE data and encourage Web sites and other media outlets to widely redistribute real-time data to individual investors.

Implementation Date of Stage Two of SR–NASD–2004–094

NASD proposes to amend the implementation date of Stage Two of SR–NASD–2004–094. Stage Two requires the implementation of certain amendments to NASD Rule 6250 that provide for the delayed dissemination of information on designated transactions in TRACE-eligible securities.[7]

NASD proposes to change the implementation date of Stage Two from February 1, 2005, to February 7, 2005. Specifically, NASD will implement on February 7, 2005: (1) Rule 6250(a)(1) and (2); (2) the portion of Rule

[5] The pilot program was recently extended to July 31, 2005. *See* Securities Exchange Act Release No. 50627 (November 3, 2004); 69 FR 65005 (November 9, 2004) (File No. SR–NASD–2004–163, filed for immediate effectiveness on October 26, 2004).

[6] A "non-professional" is defined in Rule 7010(k)(3)(C)(ii) and is limited by definition to natural persons. In addition, generally the term excludes any principal, partner, employee, or other person acting in any capacity in the financial services industry, and any person engaged in or intending to engage in any redistribution of TRACE data.

[7] SR–NASD–2004–094 was approved for implementation in two stages. The implementation date of Stage One was October 1, 2004. *See* Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202 (September 13, 2004) (File No. SR–NASD–2004–094) ("SEC Approval Order"). *See also* NASD Notice to Members 04–65 (September 2004).

6250(b)(1)(C)(i) not effective as of October 1, 2004;[8] and (3) Rule 6250(b)(2). Changing the implementation date will allow NASD to implement Stage Two on a Monday, rather than a Tuesday, which will reduce operational implementation issues.

The implementation date for Stage Two of SR–NASD–2004–094 will be February 7, 2005. NASD will announce all implementation dates of the proposed rule change in *Notices to Members* to be published no later than 30 days following Commission notice of filing of the rule change for immediate effectiveness. The implementation dates regarding proposed amendments to TRACE fees will be no more than 120 days after publication of the related Notice to Members.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,[9] which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls, and the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD rules be 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. NASD believes that the elimination of the BTDS Professional Delayed-Time Data Display Fee will equitably allocate fees among subscribers of TRACE data that desire timely data for commercial use or benefit and will not adversely affect the use and distribution of TRACE data, which provides information on TRACE-eligible securities, protecting investors in the market and furthering the public interest. In addition, NASD believes that the elimination of the BTDS Non-Professional Real-Time Data Display Fee will promote the widespread distribution of transaction information about corporate bonds to the public and provide the public with additional information about investments in debt securities, which is in furtherance of the protection of investors and the public interest. Finally, NASD believes that implementing the changes to Rule 6250 on Monday, February 7, 2005, will minimize any potential operational implementation issues in furtherance of the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from December 28, 2004, the date on which it was filed, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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–2004–189 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–2004–189. 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 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–2004–189 and should be submitted on or before February 2, 2005.

[8] Rule 6250(b)(1)(C)(i) provides for the immediate dissemination of transactions in TRACE-eligible securities that are rated BB (or the equivalent rating of one or more nationally recognized statistical rating organizations) or lower and are executed other than during the New Issue Aftermarket-10, if the size of the transaction is $1 million or less. (The term ''New Issue Aftermarket-10'' is defined in Rule 6250(a)(2).) During Stage One, NASD partially implemented Rule 6250(b)(1)(C)(i) by disseminating such transactions but only if larger transactions (*i.e.*, ''$1 million plus'' transactions) in the same TRACE-eligible security were also subject to dissemination during Stage One. (''$1 million plus'' transactions in the same TRACE-eligible security were disseminated only if the TRACE-eligible security traded an average of one or more times per day, as provided in Rule 6250(b)(1)(C)(ii).) Transactions in TRACE-eligible securities described in Rule 6250(b)(1)(C)(i) that would otherwise be subject to immediate dissemination, but occurred in a security that is traded an average of less than one time per day and in which ''$1 million plus'' transactions are subject to dissemination delays under Rule 6250(b)(2)(A) or Rule 6250(b)(2)(B), were not disseminated during Stage One, but will begin to be disseminated when Stage Two is implemented. *See* SEC Approval Order. *See also* NASD Notice to Members 04–65 (September 2004).

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *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.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–89 Filed 1–11–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4955]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On December 21, 2004, the Department of State certified, pursuant to Section 609 of Public Law 101–162 (''Section 609''), that Venezuela has adopted a program to reduce the incidental capture of sea turtles in its shrimp fisheries comparable to the program in effect in the United States. On December 21, 2004, the Department of State withdrew certification for Trinidad and Tobago and for Panama pursuant to Section 609 because neither country's program for protecting sea turtles in its shrimp fisheries is determined to be comparable to the program in effect in the United States.

EFFECTIVE DATE: January 12, 2005.

FOR FURTHER INFORMATION CONTACT: James Story, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On December 21, 2004, the Department certified Venezuela on the basis that its sea turtle protection program is comparable to that of the United States. This country joins 14 others certified by the Department in 2004 on the same basis. On December 21, 2004, the Department withdrew certification for Trinidad and Tobago and for Panama because the sea turtle protection program in place for commercial shrimp trawl fisheries in these nations is not comparable in effectiveness to that of the United States.

The Department of State has communicated the certification of Venezuela under Section 609, and the withdrawal of certification for Panama and Trinidad and Tobago, to the Office of Trade Program of Customs and Border Protection, as well as to the governments of the affected nations.

Dated: January 5, 2005.

David A Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 05–627 Filed 1–11–05; 8:45 am]

BILLING CODE 4710–09–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at San Bernardino International Airport, San Bernardino, CA

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Request to Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of approximately 49.90 acres of airport property at San Bernardino International Airport, San Bernardino, California, from all restrictions of the surplus property agreement since the land is not needed for airport purposes. Reuse of the land for commercial/light industrial purposes represents a compatible land use. Disposal of the property will provide an opportunity to acquire additional land that is needed to enhance safety and meet airport design standards.

DATES: Comments must be received on or before February 11, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Federal Register Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Donald L. Rogers, Interim Executive Director, San Bernardino International Airport Authority, Inland Valley Development Agency, 294 S. Leland Norton Way, Suite 1, San Bernardino, CA 92408–0131.

FOR FURTHER INFORMATION CONTACT: Tony Garcia, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, California 90261, telephone (310) 725–3634 and FAX (310) 725–6849. The request to release airport property may be reviewed in person by appointment at this same location or at San Bernardino International Airport, San Bernardino, California.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport's interest in surplus property.

The following is a brief overview of the request:

The San Bernardino International Airport Authority (SBIAA) requested a release from surplus property agreement obligations for approximately 49.90 acres of airport land consisting of five parcels at San Bernardino International Airport, San Bernardino, California, originally granted to them for airport purposes by the United States Air Force due to the closure of the former Norton Air Force Base. Three of the parcels are located on the west side, the fourth parcel is located northwest of the airfield and the fifth parcel is located on the east side of the airport property. The parcels are not contiguous or easily accessible to the airfield and are not required for aeronautical purposes. The property's redevelopment for non-aeronautical purposes will comply with local zoning and compatible land-use requirements. The parcels will be disposed of at fair market value based on the land's appraised value. The value of the land will be used to acquire additional land, which is needed for approach and encroachment protection, to enhance airport safety, and to comply with airport design standards. The land disposal and acquisition will provide a direct benefit to the airport and civil aviation.

Issued in Hawthorne, California, on December 20, 2004.

George Aiken,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 05–556 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review for King County International Airport, Seattle, WA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (NEM) submitted by the airport director for King County International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for King County International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 21, 2005.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 23, 2004. The public comment period ends February 21, 2005.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (425) 227–2611. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for King County International Airport are in compliance with applicable requirements of part 150, effective December 23, 2004. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 21, 2005. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The director of the King County International Airport submitted to the FAA on November 2, 2004, noise exposure maps, descriptions and other documentation that were produced during the King County International Airport FAR Part 150 Study dated March 2002 and a Supplemental Report dated July 2004. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the director of the King County International Airport. The specific documentation determined to constitute the noise exposure maps includes the following from the *King County International Airport FAR Part 150 Study of 2004 and Supplemental Report of July 2004:*

- Figure S1 at page S.6, Revised Existing Noise Exposure Map, 2003;
- Figure S3 at page S11 Revised Future Noise Exposure Map, 2008;
- Table S1 at page S.2 Summary of Airport Planning Forecasts 2003–2023 and additional aviation activity data, Table S2 at page S.3;
- Table S4 at page S.5 Existing Noise Exposure Map with Existing Land Use 2003 presents estimates of the number of persons residing with the DNL 55 through 75 noise contours;
- Figures C12 through C15 at pages C.37 through C.40 present Flight Tracks;
- Figures C10 and C11 at pages C.28 and C.29 present Noise Measurement Locations;
- Table S6 at page S.10 Future Noise Exposure Map with Existing Land Use, 2008, presents estimates of the number of persons residing with the DNL 55 through 75 noise contours;
- Pages S.37 through S.47 present the Consultation Process during the study; Appendix F presents Revised Consultation; and
- The potential exists for numerous properties to be eligible for inclusion in the National Register of Historic Places. Consultation with the State Historic Preservation Office has indicated that it is not necessary to perform a detailed evaluation of potential eligible properties at this stage of planning. Detailed evaluation will occur during the preparation of environmental documents required prior to implementation of the program.

The FAA has determined that these maps for King County International Airport are in compliance with applicable requirements. This determination is effective on December 23, 2004. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those

maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for King County International Airport, also effective on December 23, 2004. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 21, 2005.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measure may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA will consider all comments, other than those properly addressed to local land use authorities, to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 1601 Lind Avenue, SW., Suite 315, Renton, Washington;

Seattle Airports District Office, 1601 Lind Ave., SW., Suite 250, Seattle, Washington;

King County International Airport, 7233 Perimeter Road South, Seattle, Washington.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, December 23, 2004.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 05–555 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–90]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 1, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–19708 or FAA–2004–19885 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174 or Susan Lender (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19708.

Petitioner: Associated Scientists at Woods Hole.

Sections of 14 CFR Affected: 14 CFR 21.191(g).

Description of Relief Sought: To allow the petitioner to operate a Leza-Lockwood Air Cam aircraft for the purposes of scientific research. The Leza-Lockwood Air Cam aircraft holds a special airworthiness certificate in the Experimental category, for the purpose of operating amateur-built aircraft.

Docket No.: FAA–2004–19885.

Petitioner: Simula Aerospace and Defense Group, Inc.

Sections of 14 CFR Affected: 14 CFR 91.307(a) (2)(i).

Description of Relief Sought: To permit pilots to carry and make available for emergency use the Durachute Emergency Parachute System, when the Durachute Emergency Parachute System has not been packed within the previous 120 days. Specifically, Simula Aerospace and Defense Group, Inc. requests that the Durachute Emergency Parachute System be legal for carriage and emergency use in civil aircraft for up to 5 years after the date it was packed.

[FR Doc. 05–551 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–2]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 5, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2004–18913.

Petitioner: Associated Air Center.

Sections of 14 CFR Affected: 14 CFR §§ 25.785(d) and 25.813(e).

Description of Relief Sought/Disposition:

To permit relief from the requirement for firm handholds along each aisle and additional passenger areas and from prohibition of the installation of interior doors between passenger compartments in the executive interior of a Boeing Model 747–400 airplane in private use.

Grant of Exemption, 12/23/2004, Exemption No. 8460.

Docket No.: FAA–2004–18022.

Petitioner: Jet Aviation Engineering Services L.P.

Sections of 14 CFR Affected: 14 CFR §§ 25.785(d) and 25.813(e).

Description of Relief Sought/Disposition:

To permit relief from the requirement for firm handholds along each aisle and additional passenger areas and from prohibition of the installation of interior doors between passenger compartments in the executive interior of a Boeing Model 767–300ER airplane in private use.

Grant of Exemption, 12/28/2004, Exemption No. 8461.

[FR Doc. 05–552 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–3]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 1, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–19983 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lender (202) 267–8029 or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 5, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2004–19983.

Petitioner: M&S Aero.

Sections of 14 CFR Affected: 14 CFR 135.421(a).

Description of Relief Sought: To allow M&S to operate a C–182 aircraft without complying with the requirements of Part 135. Specifically, the petitioner wishes to operate the aircraft under Part 135 even though the engine has not had a major overhaul at the interval recommended by the manufacturer.

[FR Doc. 05–554 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held January 25–27, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L St., NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9435; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- January 25:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting).
- Convene Working Group-2.
- Review Working Papers.
- Draft DO–22–224B revision 1, Signal-in-Space Minimum Aviation System Performance Standard (MASPS) for Advanced VHF Digital Data Communications Including Compatibility and Digital Voice Status incorporating approved working papers.
- Forward Appendix, Standard and Recommended Practices (SARPS) to DO–224B cross-reference.
- Review Action Items.
- January 26:
- Convene Working Group-3.
- Continue work on DO–281, Rev. A. Minimum Operational Performance Standards for Aircraft VDL Mode 2 Physical, Link and Network Layer.

- Changes needed due to International Civil Aviation Organization (ICAO) Amendment Proposals.
- DO–186a/ED23B difference resolution.
- Reconvene Plenary.
- Review relevant activities.
- ICAO aeronautical Mobile Communications Panel Work.
- FAA NEXCOM activities.
- EUROCAE WG–47 status and issues.
- Others as appropriate.
- Future work for SC–172.
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn).
- Re-Convene WG–2 per above to continue review of available working papers.
- January 27:
- Re-convene WG–2 as necessary, per above to complete review of available working papers.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 16, 2004.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–558 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–19741]

Notice Requesting Comment on Renewing Approval of an Information Collection: OMB Control No. 2126–0019 (Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers)

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

ACTION: Notice; request for comments.

SUMMARY: This notice announces FMCSA's plans to request the Office of Management and Budget (OMB) to renew its approval of the information collection described below. This information collection requires Mexico-domiciled for-hire and private motor carriers who wish to register to transport property only within municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities to file Form OP–2. Under the Paperwork Reduction Act, the FMCSA is required to publish this notice.

DATES: Please submit your comments by March 14, 2005.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Dunlap (202–493–0219), Information Systems Division (MC–RIS), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., EST., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

OMB Control Number: 2126–0019.

Background: Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign motor carriers to operate across the Mexico-U.S. border into the United States. Title 49 CFR part 368 contains related regulations. The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation. Foreign (Mexico-based) motor carriers use Form OP–2 to apply for registration authority at the FMCSA. The form requests information on the motor carrier's name, address, U.S. DOT Number, form of business (*e.g.*, corporation, sole proprietorship, partnership), locations where the applicant plans to operate, types of registration requested (*e.g.*, for-hire motor carrier, motor private carrier), insurance, safety certifications, household goods arbitration certifications, and compliance certifications.

Respondents: Foreign (Mexico-based) motor carriers.

Average Burden per Response: 4 hours.

Estimated Total Annual Burden: 8,000 hours (2,000 foreign (Mexico-based) motor carriers × 4 hours = 8,000 hours).

Public Comments Invited: Your comments are particularly invited on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dms.dot.gov/search.htm*. Please include the docket number appearing in the heading of this document.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 49 U.S.C. 13902(c); and 49 CFR 1.73.

Issued: January 3, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–559 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–19683]

Notice-Request for Comments on Renewing Approval of an Information Collection: OMB Control No. 2126–0016 (Licensing Applications for Motor Carrier Operating Authority)

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

ACTION: Notice; request for comments.

SUMMARY: This notice announces FMCSA's plans to request the Office of Management and Budget (OMB) to renew its approval of the information collection described below. This information collection is for the application forms used by for-hire motor carriers of regulated commodities, freight forwarders, property brokers, and certain Mexican motor carriers to register their operations with the FMCSA. This notice is required by the Paperwork Reduction Act.

DATES: Please submit your comments by March 14, 2005.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Dunlap, (202) 493–0219, Information Systems Division (MC–RIS), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Licensing Applications for Motor Carrier Operating Authority, formerly titled ''Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.''

OMB Number: 2126–0016.

Background: The FMCSA is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; property brokers under the provisions of 49 U.S.C. 13904; and certain Mexican motor carriers under the provisions of 49 U.S.C. 13902 and the North American Free Trade Agreement (NAFTA) motor carrier access provision. The forms used to apply for registration authority with the FMCSA are: Form OP–1 for motor property carriers and brokers; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders; and Form OP–1(MX) for certain Mexican motor carriers. These forms request information on the applicant's identity, location, familiarity with safety requirements, and type of proposed operations. There are some differences on the forms due to specific statutory standards for registration of the different types of transportation entities.

Respondents: Motor carriers, freight forwarders, brokers and certain Mexican motor carriers.

Estimated Total Annual Burden: The current estimated average time to complete each registration application form is 2 hours. There are approximately 19,000 annual applications on the OP–1, OP–1(P) and OP–1(FF) forms; therefore, the estimated annual reporting burden is 38,000 hours (19,000 annual applications × 2 hours = 38,000 hours). FMCSA estimates that it receives approximately 2,060 OP–1(MX) applications annually. The estimated annual reporting burden for the current OP–1(MX) is approximately 2,060 hours (1,030 respondents per year × 2 hours each to complete form). Therefore, the total estimated annual reporting burden is 40,060 hours (2,060 hours + 38,000 hours = 40,060 hours).

Frequency: Initial applications are submitted one time; updates for changes to certain information are required as the changes occur.

Public Comments Invited: Your comments are particularly invited on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Electronic Access and Filing: You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dms.dot.gov/search.htm.* Please include the docket number appearing in the heading of this document.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended; 49 U.S.C. 13902, 13903 and 13904; and 49 CFR 1.73.

Issued: January 3, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–560 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–19819

Applicant: CSX Transportation, Incorporated, Mr. N. Michael Choat, Chief Engineer, Communications and Signal, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation (CSXT) seeks approval to extend the temporary discontinuance of the traffic control system (TCS), for a period not to exceed one year, on a portion of the LH&StL Subdivision, Louisville Division between Louisville, Kentucky, milepost HR 6.8 and Doyle, Kentucky, milepost HR 110.9. The request is associated with the July 31, 2004-catastrophic event in

which CSXT experienced a severe weather event, including tornadic storms, which devastated most of the existing pole line on the LH&StL Subdivision. The extensive pole line damage resulted in the suspension of the TCS, as authorized by Title 49 CFR, Section 235.7(a)(4), and the implementation of Direct Traffic Control Rules, under the direction of the train dispatcher, to govern train movements.

The reason given for the proposed changes is that appropriated funds have been approved to eliminate the remaining pole line between milepost HR 6.8 and milepost HR 110.9, through the installation of electronic-coded track circuits for vital control, and satellite/frame relay circuitry for non-vital controls. The work is currently in progress, but an extension for the temporary discontinuance is needed for completion of the scope of work, within CSXT's submitted time line.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on January 5, 2005.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 05–571 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on September 29, 2004 (69 FR 58219).

DATES: Comments must be received on or before February 11, 2005.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs, (NVS–131), 202–366–0307, 400 Seventh Street, SW., Room 5320, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: 49 CFR Part 543; Petitions for Exemption from the Vehicle Theft Prevention Standard.

OMB Control Number: 2127–0542.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: 49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. Section 33106 provides for an exemption to this identification process by petitions from manufacturers who equip covered vehicles with standard original equipment antitheft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as the identification system. Section 543.5 is revised for each model year after model year 1996 a manufacturer may petition NHTSA to grant an exemption for one additional line of it's passenger motor vehicles from the requirements of part 541 of this chapter.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 226 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on: January 6, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–549 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal**

Register document with a 60-day comment period was published on September 29, 2004 (69 FR 58219).

DATES: Comments must be received on or before February 11, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Mazyck at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs, (NVS–131), 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Ms. Mazyck's telephone number is 202–366–4809.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration

Title: Consolidated Labeling Requirements for 49 CFR Parts 565, 541, and 567.

OMB Control Number: 2127–0510.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: NHTSA's statute at 15 U.S.C. 1392,1397,1401,1407, and 1412 of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standard (FMVSS) and the collection of data which support their implementation. The agency, in prescribing an FMVSS, is to consider available relevant motor vehicle safety data and to consult with other agencies as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency should consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 115, Vehicle Identification Number, specifying requirements for vehicle identification numbers to aid the agency in achieving many of its safety goals.

The standard was amended in August 1978 by extending its applicability to additional classes of motor vehicles and by specifying the use of a 30-year, 17-character Vehicle Identification Number (VIN) for worldwide use. The standard was amended in May 1983 by deleting portions of FMVSS No. 115 and reissuing those portions as a general agency regulation, Part 565. Subsequently, the standard was amended again in June 1996 transferring the text of the FMVSS No. 115 to Part 565, without making any substantive changes to the VIN requirements as a result of the proposed consolidation. The provision of the Part 565 (amended) regulation requires vehicle manufacturers to assign a unique VIN to each new vehicle and to inform NHTSA of the code used in forming the VIN. These regulations apply to all vehicles: passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, and motorcycles.

Part 541

The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub.L. 102–519.) The enacted Theft Act requires specified parts of high-theft vehicle to be marked with vehicle identification numbers. In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. Each major component part must be either labeled or affixed with the VIN and its replacement component part must be marked with the DOT symbol, the letter (R) and the manufacturers' logo. The final rule becomes effective September 1, 2006.

Part 565

This part specifies the format, content and physical requirements for a VIN system and its installation to simplify vehicle identification information retrieval and to increase the accuracy and efficiency of vehicle recall campaigns.

Part 567

This part specifies the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles and motor vehicle equipment. Specifically, the VIN is required to appear on the certification label. Additionally, this certificate will provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards are applicable to the vehicle or equipment, and its date of manufacturer.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: Hour burden: 1,079,037. Cost burden: $75,680,000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on: January 6, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–550 Filed 1–11–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Zuckert Scoutt & Rasenberger on behalf of the Norfolk Southern Railway Company (WB568–4—12/30/2004) for permission to use certain data from the Board's 2003 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–598 Filed 1–11–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34637]

Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company

Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad (DRIR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate a line of railroad, known as the Stock Yard Lead. The line of railroad consists of Track 12 extending from a point of connection with a UP main line north of East 58th Avenue in unincorporated Adams County, CO, to a point of connection with existing DRIR trackage at or near Race Court in the City of Denver, Denver County, CO, a distance of 5,750 feet, or 1.09 miles, plus the following auxiliary tracks: Track 12A (450 feet); Track 12B (750 feet); Track 12C (1,767 feet); and Track 12D (1,845 feet), for a total distance of 10,562 feet, or 2 miles.

DRIR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. The transaction was scheduled to be consummated no sooner than December 24, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34637, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 4, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–599 Filed 1–11–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8896

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 8896, Low Sulfur Diesel Fuel Production Credit.

DATES: Written comments should be received on or before March 14, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger, Internal Revenue Service, room 6516, 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 Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Low Sulfur Diesel Fuel Production Credit.

OMB Number: 1545–1914.

Form Number: 8896.

Abstract: IRC section 45H allows small business refiners to claim a credit for the production of low sulfur diesel fuel. The American Jobs Creation Act of 2004, section 339 brought it into existence. Form 8896 will allow taxpayers to use a standardized format to claim this credit.

Current Actions: This is a new collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 8 hrs., 50 mins.

Estimated Total Annual Burden Hours: 884.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2005.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 05–637 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An Open Meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, February 2, 2005 from 11:30 a.m. e.t. to 12:30 p.m. e.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 6, 2005.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–638 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS); Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, February 2, 2005 from 2 p.m. Pacific time to 3 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: January 7, 2005.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–639 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS); Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to lessoning the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, February 7, 2005 from 1 p.m. eastern time to 2 p.m. eastern time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: January 7, 2005.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–640 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: As open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, February 3, 2005, from 3 p.m. e.t. to 4:30 p.m. e.t. via telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to Web site: *http://www.improveirs.org.*

The agenda will include the following: various IRS issues.

Dated: January 7, 2005.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–641 Filed 1–11–05; 8:45 am]

BILLING CODE 4830–01–M

Federal Register

Wednesday,
January 12, 2005

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4936–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2004

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2004, and ending on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2004.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers waivers of regulations granted by HUD from July 1, 2004, through September 30, 2004. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2004) before the next report is published, HUD will include any additional waivers granted for the third quarter as well as those that occur during the fourth quarter of calendar year 2004 (October 1, 2004 through December 31, 2004).

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: December 28, 2004.

Kathleen D. Koch,

Deputy General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2004, Through September 30, 2004

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development
II. Regulatory waivers granted by the Office of Housing
III. Regulatory waivers granted by the Office of Public and Indian Housing

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 51.202 and 24 CFR 51.205.

Project/Activity: Tellurian UCAN, Inc. of Madison, Wisconsin, proposed to expand an existing mixed-use residential and office building. The existing building is a two-story brick structure with office space on the first floor and seven single room occupancy (SRO) units on the second floor.

Nature of Requirements: The proposed site is located approximately 450 feet from a 30,000-gallon, above ground liquid petroleum gas (LPG) storage tank used for fueling taxi fleet. HUD's Environmental Review regulations in 24 CFR part 51 indicates that acceptable separation distance (ASD) for a project in proximity to a 30,000 gallon LPG tank is 660 feet. Tellurian engaged the engineering services of a consulting firm to evaluate and recommend mitigation measures that would provide adequate blast protection for a building proposed within 450 feet of the 30,000 gallon LPG tank. The firm concluded that the required 0.5 psi value could be safely reduced to 0.14 psi by utilizing a brick veneer and concrete masonry unit (CMU) backup on the front of the proposed building.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: September 28, 2004.

Reasons Waived: Section 51.202 of HUD's regulations provides that ''the Department will not approve an application for assistance for a proposed project located at less than the acceptable separation distance from a hazard unless appropriate mitigating measures, as defined in § 51.205.'' The waiver of this regulation was granted on the basis of the engineering recommendations of the firm for blast over pressure, by having the existing LPG tank constructed to meet the requirements of the National Fire Protection Association (NFPA 58–Gas Code Handbook) and the State of Wisconsin LPG Code, and by observing that the LPG tank is not in direct line of sight to the proposed structure.

Contact: Lisa Newman, Office of Field Management, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulations:* 24 CFR 92.503(b), 24 CFR 92.252 and 24 CFR 92.254.

Project/Activity: The State of Oklahoma requested that HUD grant waivers requiring repayment of HOME funds in the event a property does not meet the HOME affordability requirements for the period specified.

Nature of Requirements: The Oklahoma Housing Finance Agency (OHFA) proposed to impose HOME requirements on a non-assisted unit for the remaining affordability period of the property that is out of compliance with the HOME final rule. Because the period of affordability established in 24 CFR 92.254 has not been met, OHFA would be required to repay the initial HOME investment amount to the HOME account from which it was drawn, pursuant to 24 CFR 92.503(b).

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: July 7, 2004.

Reason Waived: Oklahoma Housing Finance Agency requested to substitute the HOME assisted unit lost through the fire with the new unit of 1828 South 5th Street. According to the information provided by OHFA, the proposed substitute unit is an eligible property type as described in 92.254(a)(1), met the modest housing requirements at § 92.254(a)(2)(i), will be the principal residence as required by § 92.254(a)(3) and will meet the property standards required by § 92.251(a)(2). The new unit will also be required to remain affordable for the balance of the original five-year period of affordability per § 92.245(a)(4).

Contact: Lisa Newman, Office of Field Management, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 92.503(b), 24 CFR 92.254, 24 CFR 92.503(b)(1), and 24 CFR 92.252

Project/Activity: The State of Kentucky Housing Corporation (KHC) requested waiver of the HOME Program of repayment requirement for foreclosed properties established at 24 CFR 92.503(b)(1).

Nature of Requirements: The Kentucky Housing Corporation follows the HOME policy guidance provided by the June 2003 HOMEfires regarding the repayment requirements for foreclosed HOME-assisted homebuyer properties that have not met the affordability requirements specified in § 92.254 of the HOME rule. June 2003 HOMEfires explains, if a participating jurisdiction was unaware that the design of its homebuyer program obligated it, in the event of foreclosure, to repay funds in excess of what would be available through the foreclosure, and the participating jurisdiction has since changed its program design to base recapture amounts on net proceeds, a waiver of the repayment requirement under original program design is possible.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: July 7, 2004.

Reason Waived: The Kentucky Housing Corporation changed its recapture provisions for its homebuyer program. Permitting substitution of comparable units in lieu of repayment when a project fails to meet HOME requirements for the affordability period will maintain the number of affordable housing units available in the community. The proposed unit was determined an acceptable substitution for the HOME unit lost through the fire and subsequent sale of the original HOME-assisted unit. The unit is not a federally assisted unit, but will meet the HOME requirements for the balance of the period of affordability. The proposal will transfer the HOME restrictions from the original HOME-assisted unit to the substitute unit, fulfilling the original HOME requirements.

Contact: Lisa Newman, Office of Field Management, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 570.208(a)(3) and 24 CFR 570.5.

Project/Activity: The City of Asheville, North Carolina, has requested the use of Community Development Block Grant (CDBG) funds to acquire and improve a seven-acre site on Brotherton Avenue for the construction of 32 units of co-housing as a mixed community.

Nature of Requirements: The regulations at 24 CFR 570.208(a)(3) require 51 percent of the units in a multi-unit structure must be occupied by low- and moderate-income households. Based on the proposed design, three units in each four-plex building and four units in each six-plex building, for a total of 22 of the 32 units, must be occupied by low- and moderate-income households. The regulations allow some flexibility for meeting this national objective when the CDBG assistance supports the new construction of non-elderly rental units and housing units for which funds are obligated during a program year in a Neighborhood Revitalization Strategy Area.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: July 6, 2004.

Reason Waived: This waiver allowed the city to aggregate the units in the development, and this, in turn, will allow 56 percent of the units to be occupied by low- and moderate-income households. Further approval of the waiver resulted in the development of new affordable housing and increase homeownership for low- and moderate households.

Contact: Lisa Newman, Office of Field Management, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–2565.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.40 (d)(1) and (h).

Project/Activity: The following projects requested waivers to the application fee required by 24 CFR 200.40 (d)(1) and the transfer fee required 24 CFR CFR 200.40 (h):

FHA No.	Project	State
12335118	Mountain View Apartments	AZ
02336613	Lena Park (Granite Package #7)	MA
11744034	Rolling Meadows of Enid	OK
09435014	Dakota Estates Retirement Center	ND
05135350	Garrison Woods	VA
05335440	Arcadia Village Apartments	NC
06435006	Sunlight Manor Apartments	LA
07335416	Gary NSA III Apartments	IN
07135469	Englewood Eden Green	IL
07335255	The Oaks Apartments III	IN
03444055	Interfaith Heights	PA
11535159	Donna Village Apartments	TX
05435494	Standpoint Vista Apartments	SC
06444112	Gulfway Terrace Apartments	LA
01257308	Villa Alejandrina	NY
07335299	Gardens of Greenbriar Apartments	IN
07335596	Cambridge Estates Phase IV	IN
07335371	Beacon Heights	IN
01735090	Hill Central Community Cooperative	CT
11235330	Cove Village Apartments	TX
08635179	Margaret Robertson Apartments	TN
01232258	Maplewood Apartments	NY
01257346	Mother Zion Apartments	NY
05335319	Alamance Plaza	NC
11335067	Gholson Hotel	TX
07135568	Austin Renaissance	IL
03444017	Garden Court Apartments	PA
04744016	Pinebrook Manor	MI
05635077	Manati Plaza Apartments	PR
05335406	Rochelle Manor Apartments	NC
06135382	Capitol Towers	GA
12735359	Broadway Plaza Apartments	WA
05635110	San Cristobal Apartments	PR
11435322	Colonial Park Apartments	TX
03535082	Park Plaza Apartments	NJ
10911006	Del Mar Apartments	WY
07135441	Madison Terrace Apartments	IL
10935045	Cheyenne North Apartments	WY
07135483	Washington Scene Apartments	IL
07135436	Roosevelt Independence	IL
06235209	Cedars Green Apartments	AL
08435253	Kings Cove Apartments	MO
04635170	Hi-Land Terrace Apartments	OH
10135274	California Park East	CO
06535351	Canton Estates Apartments	MS
03335151	Evergreen Arbors	PA
04235405	West Park Senior Center	OH
06235283	Normandale Apartments	AL
05938005	Wellington Square	LA
05935181	Bond House	LA
12735360	New Central Hotel	WA
01435059	Roosevelt Apartments	NY
05235367	Windsor Gardens	MD
02335268	Piedmont Brightside Apartments	MA
10935064	Springhill III Apartments	WY
10935062	Springhill I Apartments	WY
06694016	Federal Apartments	FL
10935063	Springhill II Apartments	WY
04335287	Melanie Manor	OH
11344071	Western Heights Apartments	TX
08535391	College Hill Apartments	MO
02336612	Washington Columbia Apartments	MA
08335176	Cambridge Square Apartments	KY
04235402	Brookside Village	OH
05635113	Trujillo Alto Gardens	PR
07335290	Mill Run Apartments	IN
06535362	George E. Lewis Estates	MS
05635131	Brisas De San Alfonso	PR
05635123	Villa Machuelo	PR
05235362	Upton Druid Apartments	MD
04335182	The Orchards I	OH
04335162	The Orchards II	OH
07335600	Cloverdale Height Apartments II	IN
03135235	Broadway Manor Apartments	NJ

FHA No.	Project	State
12735346	Jackson Apartments	WA
08535251	Union Sarah Rehab SS II	MO
03435210	Daniel Scott Commons	PA
07535313	Renaissance Apartments	WI
06544042	Northwood Village	MS
00035334	Benning Heights	DC
10935006	Sertoma Senior Citizens Housing, Inc.	WY
01257338	Brownsville Gardens	NY
01335120	Schuyler Court Apartments	NY
01332004	Providence Hall	NY
01435002	Metro Interfaith	NY
12135678	Mercy Terrace	CA
08735141	Ivy Avenue Apartments	TN
07335531	River Run Apartments	IN
05935039	Cooper Road Plaza Apartments	LA
07335241	Fairington of Fort Wayne	IN
06144148	Shy Manor Apartments	GA
06535040	Eastgate Garden Apartments	MS
06144197	Blakewood Apartments	GA
04735006	Neighborhood Apartments	MI
05235350	Barclay Greenmount	MD
06135312	Oakwood Apartments	GA
03135244	Hampshire House	NJ
08335012	Highland Heights Apartments	KY
08344081	Belmont Court Apartments	KY
10110557	Birchwood Manor	CO
08335033	Woodland Heights	KY
06144040	Holsey Cobb Village Apartments	GA
04535004	Abram-King Memorial Apartments	WV
07355120	Eden Green Apartments	IN
03344088	Grant Towers	PA
12135758	La Serena Apartments	CA
06544802	Madonna Manor	MS
12735200	Lake Chelan Community Apartments	WA
05235312	Cumberland Manor	MD
08344024	Edgewood Village Apartments	KY
07344403	Fowler Apartments	IN
04335289	Beasley Mills Apartments	OH
07335591	Jamestown Square of Washington	IN
07335224	Cambridge Square of Bedford	IN
06244012	Alta Vista Apartments	AL
04535159	West View Manor	WV
04235403	Highland Crest Apartments	OH
07344166	Troy Manor Cooperative II	IN
07344167	Troy Manor Cooperative III	IN
12135679	Denair Manor Apartments	CA
04344061	Rosa Parks Apartments	OH
09135016	Townhouse Apartments	SD
06535091	Southwest Village Apartments	MS
09135026	Fairlane Apartments	SD
04292505	Marshall Plaza II	OH
08635189	Southfield Apartments	TN
07435229	Oak Hill Manor	IA
12135737	Flores Gardens Apartments	CA
07335229	Cambridge Square of Marion	IN
07335459	Gary NSA V	IN
12344027	Broadway House	AZ
06435246	Stonehenge Apartments	LA
05392503	Park Heights Apartments	NC
00035427	Cavalier Apartments	DC
09338006	Glacier Manor	MT
01257216	Malcolm X 11-Phase A Apartments	NY
07344175	Vinton Woods Cooperative III	IN
06144105	Cedar Avenue Apartments	GA
04535154	Manor House Apartments	WV
11535163	Alamo Village Apartments	TX
11535198	Fifty Oaks Apartments	TX
11535338	Fox Run Apartments	TX
06592501	William H. Bell Apartments	MS
05935196	Stone Vista Apartments	LA
05935168	Pine Hill Estates	LA
11535245	Castle Manor Apartments	TX
12144371	Villa Fontana Apartments	CA
11744094	Town and Country Apartments	OK

FHA No.	Project	State
01332005	Amsterdam Sr. Citizen Housing	NY
03435212	Monte Vista Apartments	PA
06535082	Edgewood Manor Apartments	MS
07335286	Camelot Court of Paoli	IN
04535074	Freedom Place I	WV
06535012	Susie B. West Apartments	MS
02336614	Field Corner Granite	MA
02335279	Ashland Commons	MA
01257322	Woodycrest Courts II	NY
06135031	Eastgate Apartments	GA
04544014	Vandalia Terrace Apartments	WV
01235541	New Square Family Housing	NY
01257017	Friendset Apartments	NY
07135254	Ridgewood Towers Apartments	IL
07392002	South Towne Square Apartments	IN
04535069	Dunbar Towers	WV
12344044	Hartford Apartments	AZ
04535018	Calhoun Homes	WV
07435003	Oakridge Neighborhood (DMACC)	IA
02336616	Quincy Geneva—Granite #11B	MA
08635013	East Gate Apartments	TN
06544052	Broadway Estates	MS
07344071	Garden Estates West	IN
10335020	Valentine Apartments	NE
05392508	Spring Valley Apartments	NC
01335128	Fulton Mill Apartments	NY
11535162	Rio Hondo Village	TX
10244092	Concordia Apartments	KS
10235105	Concordia II Apartments	KS
01444043	Apple Blossom Acres	NY
08635149	Algood Manor Apartments	TN
11344016	Woodland Village Apartments	TX
06111135	Wisdom Woods Apartments	GA
06535005	Francis Street Apartments	MS
04535007	Miracle Acres	WV
01444056	Corning Mews Apartments	NY
07344119	Gardenside Terrace Cooperative II	IN
07344118	Gardenside Terrace Cooperative I	IN
06135536	Amberwood Apartments	GA
06235323	Claiborne Arms Apartments	AL
09344055	Thompson Falls Lions Manor	MT
07135426	Concord Commons Apartments	IL
05335009	Zion Hills Apartments	NC
06744125	Palm Avenue Baptist Apartments	FL
09335035	Sunset Capital Apartments	MT
08611043	Buena Vista Manor Apartments	TN
01257288	McKinley Manor Apartments	NY
04335098	Garden Manor Apartments	OH
08635015	Haynes Garden Apartments	TN
08144038	Tyson Park Apartments	TN
05294031	York Park Apartments	MD
04444005	Asbury Apartments	OH
04244054	Channelwood Village (aka Callis Tower)	OH
09335092	Crestwood Inn	MT
07335018	Greenwood Apartments	IN
01435035	Touraine Apartments	NY
05335047	Stewart's Creek Apartments	NC
08635062	Spring Haven Apartments	TN
08344019	Heather Hills II Apts (aka Danville II)	KY
08335344	Countryview Apartments	KY
08335222	Holley Manor Annex Apartments	KY
04535078	Montani Towers	WV
10235111	Greenway Park Apartments	KS
11435045	Pineview Apartments	TX
11435007	Louis Manor Apartments	TX
04635046	Parkview Arms I	OH
04255046	Marshall Plaza I	OH
04244043	Moody Manor	OH
11735033	Columbia Square Apartments	OK

Nature of Requirement: Section 200.40 establishes fees to be applied to M2M transactions with FHA insured mortgages. The intent of this provision is to provide an extra incentive to encourage owner cooperation with the process in a timely manner.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2004.

Reason Waived: The projects listed above were FHA insured and incentives were necessary to encourage cooperation.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0614.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: 658 Montgomery Street, Project Number: 012–35199.

Nature of Requirement: Section 290.30(a) requires that HUD-held multifamily mortgages be sold on a competitive basis, except for certain ''negotiated'' sales to state or local governments.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 30, 2004.

Reason Waived: The project owner requested prepayment of the mortgage. However, in lieu of paying off the mortgage directly, the borrower requested that the HUD loan secured by the project be assigned to Washington Mutual Bank for mortgage tax savings purposes. Washington Mutual Bank agreed to this assignment and to pay the full amount of the HUD loan.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: 675 Empire Boulevard, Project Number: 012–35200.

Nature of Requirement: Section 290.30(a) requires that HUD-held multifamily mortgages be sold on a competitive basis, except for certain ''negotiated'' sales to state or local governments.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 30, 2004.

Reason Waived: The project owner requested prepayment of the mortgage. However, in lieu of paying off the mortgage directly, the borrower requested that the HUD loan secured by the project be assigned to Washington Mutual Bank for mortgage tax savings purposes. Washington Mutual Bank agreed to this assignment and to pay the full amount of the HUD loan.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: 349 Crown Street, Project Number: 012–35201.

Nature of Requirement: Section 290.30(a) requires that HUD-held multifamily mortgages be sold on a competitive basis, except for certain ''negotiated'' sales to state or local governments.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 30, 2004.

Reason Waived: The project owner requested prepayment of the mortgage. However, in lieu of paying off the mortgage directly, the borrower requested that the HUD loan secured by the project be assigned to Washington Mutual Bank for mortgage tax savings purposes. Washington Mutual Bank agreed to this assignment and to pay the full amount of the HUD loan.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 290.30(a).

Project/Activity: Hilltop Gardens, Project Number 051–EH002.

Nature of Requirement: Section 290.30(a) requires that HUD-held multifamily mortgages be sold on a competitive basis, except for certain ''negotiated'' sales to state or local governments.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 13, 2004.

Reason Waived: The project owner requested prepayment of the mortgage. However, in lieu of HUD entering into a non-competitive loan sale arrangement, the non-profit sponsor requested a negotiated sale for a price equal to the outstanding mortgage balance. The negotiated sale was determined more beneficial to the community than a competitive note sale to the highest bidder because the sponsor's purchase of the note ensures a local, continuing involvement in this facility.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 291.210(a).

Project/Activity: Single Family Property Disposition.

Nature of Requirement: Section 291.210(a) permits direct sales without mortgage insurance to governmental entities and private nonprofit organizations at deep discounts off the list price of properties sold for use in HUD and local housing or homeless programs. Section 291.210(c) permits HUD to dispose of HUD-owned single family properties through direct sales to other individuals or entities that do not meet any of the categories specified in this section, if a finding is made by the Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, in writing, that such sales would further the goals of the National Housing Act (12 U.S.C. 1701 et seq.) and would be in the best interest of the Secretary.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 29, 2004.

Reason Waived: A waiver of the requirements of 24 CFR 291.210 (a) was needed in order to provide authority for governmental entities, school districts and private nonprofit organizations to purchase properties offered with mortgage insurance on a direct sales basis and to provide discounts of 50 percent for use in the Teacher Next Door Initiative. Based on HUD's experience with REO sales, it would not be detrimental to the insurance fund to permit governmental entities, school districts, and private nonprofit organizations to purchase properties offered with mortgage insurance on a direct sales basis or to provide discounts of 50 percent on properties sold for use in the Teacher Next Door Initiative. These sales will be upon such terms and conditions as the Secretary may prescribe. This finding applies to the direct sale of HUD-owned properties to teachers in designated revitalization areas. The Teacher Next Door Initiative gives teachers the opportunity to live and work in communities where they are most needed. The integration of teachers, who are role models and mentors, into a community enhances the community's quality of life. To date, the program has enabled the Department to dispose of 3,700 properties from its inventory, while providing homeownership to an equivalent number of qualified buyers and supporting residency of employed,

professional teachers in revitalization areas.

Contact: Wanda Sampedro, Director, Asset Management and Disposition Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1672.

• *Regulation:* 24 CFR 401.461.

Project/Activity: The following projects requested waivers to the simple interest requirement on the second mortgage to allow compound interest at the applicable federal rate.

FHA No.	Project	State
07235081	Bissel Apartments	IL

Nature of Requirement: Section 401.461 requires that the second mortgages have an interest rate not more than the applicable federal rate. Section 401.461 (b)(1) states that interest will accrue but not compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 17,2004.

Reason Waived: This regulatory restriction would be construed as a form of federal subsidy, thereby creating a loss of tax credit equity. This loss would adversely affect the ability to close the Restructuring Plan and could cause the loss or deterioration of these affordable housing projects. Therefore, compound interest was necessary for the owner to obtain Low Income Housing Tax Credits under favorable terms and in order to maximize the savings to the Federal Government.

Contact: Dennis Manning, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0614.

• *Regulation:* 24 CFR 401.461.

Project/Activity: The following projects requested waivers to the simple interest requirement on the second mortgage to allow compound interest at the applicable federal rate.

FHA No.	Project	State
11235331	Village of Kaufman	TX

Nature of Requirement: Section 401.461 requires that the second mortgages have an interest rate not more than the applicable federal rate. Section 401.461 (b)(1) states that interest will accrue but not compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2004.

Reason Waived: This regulatory restriction would be construed as a form of federal subsidy, thereby creating a loss of tax credit equity. This loss would adversely affect the ability to close the Restructuring Plan and could cause the loss or deterioration of these affordable housing projects. Therefore, compound interest was necessary for the owner to obtain Low Income Housing Tax Credits under favorable terms and in order to maximize the savings to the Federal Government.

Contact: Dennis Manning, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0614.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents.

FHA number	Project	State
07435185	Adams Court	IA
01257298	Alexander Coprew Apartments	NY
3135237	Arlington Arms Apartments	NJ
07135568	Austin Renaissance	IL
13344039	Childress Manor	TX
01435051	Colt Block Apartments	NY
07135481	Corcoran Place Apartments	IL
12335128	Fillmore I	AZ
10535072	Glenbrook Apartments	UT
05335424	South Village Apartments	NC
01635074	Villa Excelsior	RI
01335113	Woodburn Court II	NY

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner and therefore the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0614.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
06135370	Georgian Woods Apartments	GA
01435062	East Court V	NY
07135469	Englewood Eden Green	IL
07135455	Loma Linda Apartments	IL
11435350	Bay Terrace Apartments	TX
05335319	Alamance Plaza	NC
05335440	Arcadia Village Apartments	NC
05335387	Northwood Apartments	NC
06535363	Decatur Meadows Apartments	MS
06335206	Harbour Place Apartments	FL
06735272	Hudson Estates	FL
10235180	Brookridge Plaza Apartments	KS
10235178	Jewel Crest	KS
10235139	Mulberry Court Apartments	KS
12235570	Plummer Village	CA
01257278	Elliot Graham Housing	NY
01235527	Highland Falls Housing	NY
01232237	Southport Mews Apartments	NY
03435209	Dorado Village	PA
03435167	Freeland Elderly Housing	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 16, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–0614, ext. 8371.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA number	Project	State
06235318	Russel Erskine Apartments	AL
10135362	Castle Creek Commons East	CO
00035309	Southview Apartments I (aka Southview West)	DC
06135387	Bridge Creek Apartments	GA
07435184	Greenway of Burlington	IA
07135483	Washington Scene Apartments	IL
08535312	Maplewood Loop Apartments	MO
06535222	Highland View Apartments	MS
04335284	Melford Village	OH
04644100	Miami Manor	OH
03435214	Chester Apartments	PA
03435216	Coplay Apts./Eagle Apts.	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 16, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0614.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: L.C. Hotchkiss Terrace, Clovis, CA, Project Number: 121–EE163/CA39–S021–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 2, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area,

and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Paumanack Village VI, Melville, NY, Project Number: 012–EE322/NY36–S021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 7, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Fayette Hills Unity, Oakhill, WV, Project Number: 045–HD033/WV15–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Carnation Housing for the Elderly, Orchard Park, NY, Project Number: 014–EE217/NY06–S021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Les Petites Maison, Lafayette, LA, Project Number: 064–HD072/LA48–Q021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Fairham Homes, Middletown, OH, Project Number: 046–HD025/OH10–Q011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Anne Residence, Beardstown, IL, Project Number: 072–EE148/IL06–S021–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: West Brighton Seniors, Brighton, NY, Project Number: 014–EE206/NY06–S011–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 14, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Williams Street Apartments, Jefferson City, MO, Project Number: 085–HD036/MO36–Q002–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Michigan/Jefferson Housing, Galesburg, IL, Project Number: 072–HD121/IL06–Q021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Providence St. Elizabeth House, Seattle, WA, Project Number: 127–EE032/WA19–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 21, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Highland County VOA Living Center, Sebring, FL, Project Number: 067–HD091/FL29–Q021–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Arcadia Commons, Albany, GA, Project Number: 061–EE110/GA06–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Diggs Drive Group Home, Hampton, VA, Project Number: 051–HD115/VA36–Q021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 27, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Charles A. Gonzalez Senior Community Residence, San Antonio, TX, Project Number: 115–EE066/TX59–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 29, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: John Marvin Tower, Augusta, ME, Project Number: 024–EE067/ME36–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 29, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Christian Life Retirement Center V, North Aurora, IL, Project Number: 071–EE165/IL06–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 5, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Pathways, Inc., Greenwich, CT, Project Number: 017–HD022/CT26–Q981–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 5, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area,

and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Winchester Senior Housing, Elko, NV, Project Number: 125–EE118/NV25–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 6, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Catholic Charities Senior Housing at Woodlawn, Baltimore, MD, Project Number: 052-EE051/MD06-S031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 18, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Brook Street Group Home, Ilion, NY, Project Number: 014–HD110/NY06–Q021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 18, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Sawyer Street House, South Portland, ME, Project Number: 024–HD040/ME36–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 19, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Peggy Alsup Arbors, Nashville, TN, Project Number: 086–EE043/TN43–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Beach Street House, Saco, ME, Project Number: 024–HD039/ME36–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: 15th Avenue Baptist Village Manor, Nashville, TN, Project Number: 086–Ee044/TN43–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Germantown Park, Germantown, OH, Project Number: 046–EE069/OH10–S031–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Riverside Park, Riverside, OH, Project Number: 046–EE070/OH10–S031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Legion Woods, New Haven, CT, Project Number: 017–HD028/CT26–Q001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 27, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Delano Commons, Delano, MN, Project Number: 092–EE093/MN46–S031–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 30, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bausman Street Independent Living, Pittsburgh, PA, Project Number: 033–HD078/PA28–Q021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 31, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Venture 2002 Development, New York City, NY, Project Number: 012–HD112/NY36–Q021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 31, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: East Bay Mental Health, East Providence, RI, Project Number: 016–HD033/RI43–Q001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 3, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hunterdon Consumer Home, East Amwell, NJ, Project Number: 031–HD121/NJ39–Q001–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 3, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shenandoah Apartments, Lafayette, TN, Project Number: 086–EE050/TN43–S031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Portland Habilitation Center, Portland, OR, Project Number: 126–HD037/OR16–Q–021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable

in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Delran Consumer Home, Delran, NJ, Project Number: 035–HD046/NJ39–Q001–015.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: D'Youville Senior Living, Lowell, MA, Project Number: 023–EE155/MA06–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Community Hope VII Consumer Home, Sussex, NJ, Project Number: 031–HD130/NJ39–Q011–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Saint Mark's Villa II, Jackson, MS, Project Number: 065–EE037/MS26–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Rosewood Apartments, Kansas City, MO, Project Number: 084–HD040/MO16–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Faith Village, Houston, TX, Project Number: 114–EE096/TX24–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Jude Apartments II, Gates, NY, Project Number: 014–EE216/NY06–S021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: La Casa, North Providence, RI, Project Number: 016–EE035/RI43–S001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Titus House, Erie, PA, Project Number: 033–HD074/OA28–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 12, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Casa del Rio Grande, Del Norte, CO, Project Number: 101–EE055/CO099–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 16, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Simpson Mid-Town, Philadelphia, PA, Project Number: 034–EE107/PA26–S001–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: New Courtland Section 202, Philadelphia, PA, Project Number: 034–EE119/PA26–S011–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 20, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Independence Village, Huntsville,TX, Project Number: 114–HD024/TX24–Q021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Independence Hill, Moscow, ID, Project Number: 124–HD011/ID16–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Billings VOA Elderly Housing, Billings, MT, Project Number: 093–EE013/MT99–S021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130.

Project/Activity: Victory Gardens, New Haven, CT, Project Number: 017–EE066/CT26–S011–002.

Nature of Requirement: Section 891.130(b) prohibits an identify of interest between the sponsor or owner (or borrower, as applicable) and any development team member or between development team members until three years after final closing (for conflicts of interest) and two years after final closing (for identities of interest).

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 2, 2004.

Reason Waived: Funds made from the sale of the parcel of land were limited to the actual acquisition cost incurred by the Housing Authority of the City of New Haven (NHHA) affiliate and were a minimal amount in comparison to the appraised value of the parcel. Also, NHHA and the City of New Haven contributed substantial funds to the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).

Project/Activity: New Stuyahok Senior Apartments, New Stuyahok, AK, Project Number: 176–EE026/AK06–S021–001.

Nature of Requirement: Section 891.130(b) prohibits an identify of

interest between the sponsor or owner (or borrower, as applicable) and any development team member or between development team members until two years after final closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 16, 2004.

Reason Waived: The Housing Authority is the only agency in the remote Alaska Village capable of managing the project, and it received no benefit from the donation of the land.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).

Project/Activity: Luther House III of Jennersville, West Grove, PA, Project Number: 034–EE130/PA26–S032–002.

Nature of Requirement: Section 891.130(b) prohibits an identify of interest between the sponsor or owner (or borrower, as applicable) and any development team member or between development team members until two years after final closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The sponsor located a third-party architectural firm to conduct all supervision inspections during construction as well as to buy the rights of the plans from the previous architect.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: River View Gardens, New York—Queens, NY, Project Number: 012–EE195/NY36–S961–013.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 28, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Victory Heights, Washington, DC, Project Number: 000–EE058/DC39–S021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 25, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to secure funding from the local government.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Encore West Residence, New York, NY, Project Number: 012–EE286/NY36–S0010001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 27, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Calloway Street One, Salisbury, MD, Project Number: 052–EE042/MD06–S011–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 31, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: North End New Bedford Housing for the Elderly, New Bedford, MA, Project Number: 023–EE129/MA06–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other

sources. Also, additional time was needed to finalize the initial closing package.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: NCR of Memphis, Memphis, TN, Project Number: 081–EE033/TN40–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to process the request for additonal funding and to modify the construction documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Wisconsin Street Project, Casper, WY, Project Number: 109–EE006/WY99–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 16, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to hire another housing consultant, to redesign the heating system and to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Billings VOA Elderly Housng, Billings, MT, Project Number: 093–EE013/MT99–S021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nanaikeola Senior Apartments, Waianae, HI, Project Number: 140–EE019/HI10–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 2, 2004.

Reason Waived: Additional time was needed to resolve and process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Spruce Landing, Kansas City, MO, Project Number: 084–HD036/MO16–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 12, 2004.

Reason Waived: Additional time was needed to secure the building permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. John's Manor, Glendale, AZ, Project Number: 123–EE079/AZ20–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 14, 2004.

Reason Waived: Additional time was needed to secure approval from the City of Glendale on the design plans.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Genesee Housing, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 21, 2004.

Reason Waived: Additional time was needed for the Internal Revenue Service to resolve the issue with project rental assistance contracts as it relates to tax credit eligibility.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Housing Opportunities Corporation, North Providence, RI, Project Number: 016–EE035/RI43–S011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 21, 2004.

Reason Waived: Additional time was needed to seek alternative sites due to zoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: East Bay Mental Health Center, East Providence, RI, Project Number: 016–HD033/RI43–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 21, 2004.

Reason Waived: Additional time was needed to seek an alternative site due to zoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Simpson Mid-Town Apartments, Philadelphia, PA, Project Number: 034–EE107/PA26–S001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 27, 2004.

Reason Waived: Additional time was needed to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Emerald Bay Estates, South Lake Tahoe, CA, Project Number: 136–HD014/CA30–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 28, 2004.

Reason Waived: Additional time was needed to make revisions to the design of the project, obtain necessary state, regional and local approvals, and to allow for seasonal construction limitations.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NCR of Memphis, Memphis, TN, Project Number: 081–EE033/TN40–S011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 2, 2004.

Reason Waived: Additional time was needed to seek an alternative site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Tierra del Sol, Cathedral City, CA, Project Number: 143–EE041/CA43–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 3, 2004.

Reason Waived: Additional time was needed to modify the permit drawings.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Johnnie B. Moore Towers, Atlanta, GA, Project Number: 061–EE094/GA06–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 4, 2004.

Reason Waived: Additional time was needed for scheduling the initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ottawa River Estates, Toledo, OH, Project Number: 042–HD072/OH12–Q971–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 20, 2004.

Reason Waived: Additional time was needed as a result of legal issues that arose in connection with this project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Daisy House, Rochester, NY, Project Number: 014–EE208/NY06–S011–007.

Nature of Requirement: Section 891.165 provides that the duration of

the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 2004.

Reason Waived: Additional time was needed to resolve Phase II Environmental Site Assessment issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cornhill Apartments, Rochester, NY, Project Number: 014–HD099/NY06–Q001–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 2004.

Reason Waived: Additional time was needed to resolve environmental issues with the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: McDowell County Housing Action Network, War, WV, Project Number: 045–EE014/WV15–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 2004.

Reason Waived: Additional time was needed to revise the plans and specifications and to obtain supplemental funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Peebles Court, Pulaski, TN, Project Number: 086–HD032/TN43–Q031–002.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax-exempt status under section 501(c)(3) or (c)(4) of the Internal Revenue Code prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 9, 2004.

Reason Waived: The required tax-exemption ruling was expected to be issued soon, and was required to be obtained prior to the final closing of the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Gladys Roden Senior Village, Hohenwald, TN, Project Number: 086–EE051/TN43–S032–005.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax-exempt status under section 501(c)(3) or (c)(4) of the Internal Revenue Code prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 10, 2004.

Reason Waived: The required tax-exemption ruling was expected to be issued soon, and was required to be obtained prior to the final closing of the project.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Riverview Apartments, Sistersville, WV, Project Number: 045–EH100.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 3, 2004.

Reason Waived: HUD approved an age waiver only for the property to help alleviate the occupancy problem.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Greenridge Place Apartments, Meeker, OK, Project Number: 117–EE023.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 24, 2004.

Reason Waived: A waiver of the regulation for one year will allow the owner to maintain full occupancy and the project will not fail.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Brackettville Housing Authority (TX239) Brackettville, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 7, 2004.

Reason Waived: The PHA received less than $300,000 in federal funds. Therefore, the PHA was not required to

submit an audit. However, the PHA did not submit its unaudited financial statement. The late presumptive failure (LPF) score for the audit was replaced with LPF score for the unaudited statement of 24.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 1280 Maryland Ave., SW, Suite 800, Washington, DC 20024, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Georgetown Housing Authority (TX264) Georgetown, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates/ Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 15, 2004.

Reason Waived: The PHA uncovered irregularities in previous years' audits. As a result, the contract with the auditor was rescinded, and a new auditor was hired. The auditor was unable to complete the audit by the June 30, 2004, due date. The audit was submitted September 21, 2004, and approved October 2, 2004.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 1280 Maryland Ave., SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Virgin Islands Housing Authority (VQ001) St. Thomas, VI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 26, 2004.

Reason Waived: The PHA has had to reconstruct a substantial amount of documentation in order to adequately reconcile both financial and operational data. Significant progress has been made, but there are critical issues that need be rectified before accurate audited financial statements can be submitted. The PHA has until November 15, 2004, to complete and submit the audited financial information.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 1280 Maryland Ave., SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Metropolitan Gardens, Phase II HOPE VI Project AL09URD001I197, Birmingham, AL.

Nature of Requirement: Section 941.606(n)(1)(ii)(B) requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing

Date Granted: August 9, 2004.

Reason Waived: The Housing Authority of the Birmingham District (HABD) requested the waiver to use Integral/Doster Metropolitan Gardens Company Incorporated, a joint venture of the Integral Building Group, LLC and Doster Construction Partnership, Inc., as the General Contractor for Phase II. The HABD procured Metropolitan Gardens Developer, LLC, comprised of the Integral Properties, LLC and Sloss Real Estate Group, Inc., as the Master Developer for the revitalization of Metropolitan Gardens. The Integral Building Group is an affiliate of Integral Properties, LLC. Integral/Doster Metropolitan Gardens Construction LLC did not bid to become the general contractor, as specified in the provision of the mixed financed regulation, but HABD provided a demonstration that the construction costs were reasonable and are within HUD requirements. The HABD submitted a third party cost estimate of $14,156,885. The construction cost provided by Integral/Doster was $14,086,530, and was $70,355 lower than the third party estimate. As the construction contract is less than or equal to the independent cost estimate, the Department granted the waiver.

Contact: Milan Ozdinec, Deputy Assistant Secretary, Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 401–8812.

• *Regulation:* 24 CFR 964.215(b).

Project/Activity: Housing Authority of Baltimore City Grant Number—MD00RSF002P0102.

Nature of Requirement: Section 964.215(b) provides that a grant agreement shall be for a term of three to five years (3–5 years), and renewable at the expiration of the term.

Granted By: Michael M. Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 23, 2004.

Reason Granted: The housing authority sought additional time for phasing down training and for providing follow-up services for residents who had started their own businesses.

Contact: Dina Lehmann-Kim, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410, telephone 202–708–4932 x3410.

• *Regulation:* 24 CFR 983.3(a)(2).

Project/Activity: Clay County Housing and Redevelopment Authority (CCHRA), Clay County, MN. The CCHRA requested a waiver regarding uncommitted, available vouchers to permit it to attach 19 project-based vouchers to a combined 38-unit project (an 8-unit of supportive housing project and a 30-unit town house project) along with the Moorhead Public Housing Agency.

Nature of Requirement: Section 983.3(a)(2) requires that the number of units to be project-based must not be under a tenant-based or project based housing assistance payments (HAP) contract or otherwise committed, *e.g.*, vouchers issued to families searching for housing or units under an agreement to enter into a HAP contract (AHAP).

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 1, 2004.

Reason Waived: The regulation was waived because it was confirmed through the CCHRA's submission of its most recent Voucher Management System report and self-reported leasing data for May and June 2004 that unit-months leased were declining. Additionally, the Public Housing

Information Center (PIC) data verified adequate turnover to support the availability of the required 19 vouchers at the time of AHAP execution.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW. Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.203(a)(3).

Project/Activity: Indianapolis Housing Authority (IHA), Indianapolis, IN. The IHA requested a waiver so that it could maintain separate waiting lists for each of its project-based voucher (PBV) projects.

Nature of Requirement: Section 983.203(a)(3) requires that a public housing agency (PHA) may use the tenant-based waiting list, a merged waiting list, or a separate PBV waiting list for admission to the PBV program. If a PHA opts to have a separate PBV waiting list, it may use a single waiting list for all PBV projects or may use a separate PBV waiting list for an area not smaller than a county or municipality.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 21, 2004.

Reason Waived: The waiver was granted because section 8(o)(13)(J) of the United States Housing Act of 1937 allows, subject to a PHA's waiting list policies and selection preferences, the maintenance of separate waiting lists for PBV structures as long as all families on the PHA's waiting list for PBV assistance can place its name on any of the separate PBV waiting lists. The request was consistent with the statute.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and Section II , Subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Detroit Housing Commission (DHC), Detroit, MI. The DHC requested a waiver of competitive selection of owner proposals and deconcentration requirements to permit it to attach PBA to 50 units at Woodbridge Estates.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 6, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since the project underwent a competitive process and was awarded Low Income Housing Tax Credits through the Michigan State Housing Development Authority. An exception to the deconcentration requirements was granted since Woodbridge Estates will be located on the former site of Jeffries Homes that had 2,170 public housing units of which 1,873 were demolished. The redeveloped site, which will include Woodbridge Estates, will have 767 units of mixed-income housing. Another 142 units will be developed in areas adjacent to the site. Of the redevelopment units, approximately 30 percent will be market rate and 70 percent will be for low-income families. A commercial component is planned for the site that will include up to 40,000 square feet of retail space for small commercial businesses. The significant decrease in the number of assisted units at this HOPE VI site and planned on-site commercial development are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and Section II, Subpart E of the January 16,2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Chicago Housing Authority (CHA), Chicago, IL. The CHA requested a waiver of competitive selection of owner proposals and deconcentration requirements to permit it to attach PBA to 16 units at Liberty Square.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 14, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since it underwent a competitive process for Low Income Housing Tax Credits through the Illinois State Housing Development Authority and Tax Increment Financing through the City of Chicago's Department of Housing and the Chicago City Council. An exception to the deconcentration requirements was granted since all of the sites of Liberty Square are within one block of the HUD-designated Empowerment Zone and should derive its benefits. The purpose of establishing empowerment zones is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. Just south of the Liberty Square sites, a newly constructed shopping center with a major supermarket and ten-screen Cineplex movie theatre has been developed. The drop in the poverty rate of East Garfield Park between 1990 and 2000 and the goals of an Empowerment Zone are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and Section II, Subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Warwick Housing Authority (WHA), Warwick, RI. The WHA requested a waiver of competitive selection of owner proposals under the project-based program for the Newport Heights project. The WHA also requested an exception to the initial

guidance for the Newport Heights project that is located in a census tract with a poverty rate greater than 20 percent.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a PHA's HUD-approved advertisement and unit selection policy. Section II subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 21, 2004.

Reason Waived: Approval to waive competitive selection and related requirements was granted for this project since the developer/partner of the project was competitively selected for two previous federal programs. Approval of the exception for deconcentration was granted since the area of the city where the units would be located has been targeted for revitalization and will be a mixed income, privately managed community. The units are part of a 329-unit HOPE VI site and 70 of the 329 units will be market rate units that are targeted to households earning above 80 percent of area median income. The revitalization plan for the neighborhood in which the units will be located includes the construction of a college and day care center. Additionally, a 14-acre mall has been developed near the Newport Heights site, which has created 400 new jobs available to area residents.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and Section II, Subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Housing Authority of the City of Tampa (HACT), Tampa, FL. The HACT requested a waiver of competitive selection of owner proposals and deconcentration requirements to permit it to attach PBA to 66 units at Belmont Heights Estates Phase III.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 27, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since the developer/partner of this project participated in a competitive process for bond financing and low income housing tax credits that required stringent selection criteria. An exception to the deconcentration requirements was granted since Belmont Heights Estates Phase III will be located on the former site of adjacent public housing projects, Ponce de Leon Courts and College Hill Homes, which had 1,300 units, all of which were demolished. The redeveloped site, which will include Belmont Heights Estates Phase III, will have 825 rental units of which 57 will be market rate. The decrease of 532 assisted units at this HOPE VI site along with newly developed mixed-income housing, are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and Section II, Subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Goshen Housing Authority (GHA), Goshen, IN. The GHA requested a waiver of competitive selection of owner proposals and the 25 percent cap on the number of units in a building that can have PBA attached to permit it to attach PBA to nine units at Lincoln Avenue Apartments.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Section II, Subpart F of the Initial Guidance requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services. Until regulations are promulgated regarding the category of families receiving supportive services, Headquarters has been authorizing implementation of this aspect of the law on a case-by-case basis.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 9, 2004.

Reason Waived: Approval to waive competitive selection was granted for this project since it was competitively awarded funding by the Indiana Housing Finance Authority and the Federal Home Loan Bank of Indianapolis. An exception to the unit cap was granted since the GHA proposed to provide the following supportive services to families living in Lincoln Avenue Apartments: financial literacy; nutrition; family interaction; government and community awareness; job training; and increased health care awareness.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and 983.55(a) and (d), and Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Richmond Housing Authority (RHA), Richmond, CA. The RHA requested a waiver of competitive selection of owner proposals and deconcentration requirements to permit it to attach PBA to 62 units at the Easter Hill HOPE VI Project.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Portions of §§ 983.55(a) and (d) for new construction projects require compliance with PHA selection criteria. Section II, Subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing

and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 8, 2004.

Reason Waived: Approval to waive competitive selection and related requirements was granted for this project since it underwent a competitive process when the RHA selected its HOPE VI development partner. An exception to the deconcentration requirements was granted since within the past ten years, approximately 2,200 new market rate residential units have been built in the census tract and last year, the seven-acre Harbor Gate Shopping Center was completed. South of the Easter Hill site the State Department of Health Services is developing a research facility projected to house 1,000 employees. Another economic development project will be the conversion of the former Ford assembly plant for commercial and industrial use. These activities are consistent with the goal of deconcentration, and expanding housing and economic opportunities.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), and 983.55(a) and (d), and Section II Subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance) and 24 CFR 983.203(a)(3).

Project/Activity: St. Louis Housing Authority (SLHA), St. Louis, MO. The SLHA requested a waiver of competitive selection of owner proposals, deconcentration, and waiting list requirements to permit it to attach PBA to 38 units at the Blumeyer Homes HOPE VI Revitalization Project Phase 2.

Nature of Requirement: Section 983.51 requires competitive selection of owner proposals in accordance with a housing authority's HUD-approved advertisement and unit selection policy. Portions of Section 983.55(a) and (d) for new construction projects requires compliance with PHA selection criteria. Section II, Subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section 983.203(a)(3) requires that a public housing agency (PHA) may use the tenant-based waiting list, a merged waiting list, or a separate PBV waiting list for admission to the PBA program. If a PHA opts to have a separate PBA waiting list, it may use a single waiting list for all PBA projects or may use a separate PBA waiting list for an area not smaller than a county or municipality

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 24, 2004.

Reason Waived: Approval to waive competitive selection and related requirements was granted for this project since the developer/partner of the two projects was competitively selected by the SLHA as the HOPE VI partner in accordance with 24 CFR 941.602(d)(1) which requires competitive proposal procedures for qualifications-based procurement. An exception to the deconcentration requirements was granted since the overall revitalization plan for this HOPE VI project was to replace 1,162 public housing units with 229 replacement public housing units, 112 non-public housing Low Income Housing Tax Credit units, 174 market rate rental units and 300 homeownership units for an overall reduction of 521 assisted, low-income units in the census tract. Approval to waive waiting list requirements was granted since Section 8(o)(13)(J) of the U. S. Housing Act of 1937 allows, subject to a PHA's waiting list policies and selection preferences, the maintenance of separate waiting lists for PBA structures as long as all families on the PHA's waiting list for PBA can place their names on any of the separate PBA waiting lists.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority City of Los Angeles (HACLA) Los Angeles, CA. The HACLA requested a exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant that is developmentally disabled and suffer from severe autism.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 14, 2004.

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant to lease a unit with the necessary amenities required to maintain his health and live independently and allow him additional time to find another unit.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: New York State Division of Housing and Community Renewal (DHCR), New York, NY. The DHCR requested a exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant that is physically disabled and suffer from multiple sclerosis.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 11, 2004.

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant to lease a unit with the necessary amenities required to maintain her health and live independently and allow her additional time to find another unit.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Arlington County Department of Human Services (DHS), Arlington VA. Arlington County DHS requested an extension of a special

exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disabilities. These disabilities include fibromyalgia, chronic fatigue syndrome, anemia, arthritis, and severe allergic reactions to chemicals and toxins found in paint, turpentine, cleaning fluids, and other substances.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 8, 2004.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher holder to continue to reside in the two-bedroom townhouse that has enabled her to maintain her health and live independently.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.207(b)(3).

Project/Activity: Minneapolis Public Housing Authority (MPHA), Minneapolis, MN. The MPHA requested a waiver of a selection preference regulation in order to select Housing Opportunities for Persons with AIDS (HOPWA)-eligible families to occupy ten of the 28 units that will receive project-based voucher assistance at the Clare Apartments.

Nature of Requirement: Section 982.207(b)(3) states that a housing agency may adopt a preference for admission of families that include a person with disabilities, but may not adopt a preference for persons with a specific disability, such as HIV/AIDS

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 12, 2004.

Reason Waived: Since by law persons with HIV/AIDS only may occupy units developed with HOPWA funds, a public housing agency may only authorize occupancy of such units that also receive project-based voucher assistance by persons with HIV/AIDS. Therefore, in selecting families to refer to the owner for occupancy of these units, the MPHA will have to pass over persons on its waiting list until it reaches a person with HIV/AIDS who is interested in moving into one of these units at the Clare Apartments.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.256(c)(1)(i)(ii).

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA. The HANO requested a waiver of the appraisal requirements to permit it to attach project-based assistance (PBA) under the Housing Choice Voucher program to 100 scattered site units as part of the St. Thomas HOPE VI development.

Nature of Requirement: Section 983.256(c)(1)(i) states that to determine that the initial rent to owner is reasonable, the housing agency must use a qualified State-certified appraiser who has no direct or indirect interest in the property or otherwise. Section 983.256(c)(1)(ii) requires that appraisers complete a comparability analysis on HUD-Form 92273.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 28, 2004.

Reason Waived: HANO contracted with Applied Real Estate Analysis, Inc. (AREA) to complete a comprehensive rent reasonableness study to ensure that the rents for Section 8 units are reasonable. The methodology used to develop the study is consistent with regulations governing rent reasonableness and equals or exceeds what is normally done by State-certified appraisers. The rent figure is based on specific comparable units and on market-defined values for the differences between the comparable units and the unit being leased.

Contact: Michael Dennis, Acting Director, Housing Vouchers Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, (202) 708–0477.

• *Regulation:* 24 CFR 982.207(b)(3).

Project/Activity: The Berkeley Housing Authority (BHA), Berkeley, CA. The BHA requested a waiver of a selection preference regulation in order to select Housing Opportunities for Persons with AIDS (HOPWA)-eligible families to occupy two of the 39 units that will receive project-based voucher assistance at Sacramento Senior Homes.

Nature of Requirement: Section 982.207(b)(3) states that a housing agency may adopt a preference for admission of families that include a person with disabilities, but may not adopt a preference for persons with a specific disability, such as HIV/AIDS.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 2004.

Reason Waived: Since by law persons with HIV/AIDS only may occupy units developed with HOPWA funds, a public housing agency may only authorize occupancy of such units that also receive project-based voucher assistance by persons with HIV/AIDS. Therefore, in selecting families to refer to the owner for occupancy of these units, the BHA will have to pass over other elderly, disabled persons on its waiting list until it reaches a person with HIV/AIDS who is interested in moving into one of these units at Sacramento Senior Homes.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.617(c)(2).

Project/Activity: Bangor Housing Authority (BHA), Bangor, ME. The BHA requested that a waiver to the shared housing regulations to permit the use of the payment standard for a one-bedroom unit rather than the pro-rata portion of the payment standard for a three-bedroom unit as a reasonable accommodation for the voucher participant with a disability. The participant currently has a one-bedroom voucher and has been renting a bedroom in a three-bedroom house owned by a friend, who also lives there. The owner of the house wants more than the maximum amount of rent that the shared housing regulations allow. The participant has been diagnosed with Bipolar Disorder and Intermittent Explosive Disorder. These conditions are exacerbated by living in an apartment complex with its constant interactions with other tenants. The participant's therapist believes that it would be beneficial for him to live in a single-family home with a person he trusts and with whom he can feel safe and secure.

Nature of Requirement: Section 982.617(c)(2) states that the rent to the owner for a family may not exceed the pro-rata portion of the payment standard amount for the size of the shared housing unit.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 11, 2004.

Reason Waived: Approval of the waiver was granted to allow a disabled voucher holder to continue to reside in the house that he shares with a friend he trusts and with whom he feels safe and secure.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Myrtle Beach Housing Authority (MBHA), City of Myrtle Beach, SC. The MBHA requested an exception to the initial guidance since the Alliance Inn was located in a census tract with a poverty rate of 25 percent.

Nature of Requirement: Section II, Subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 8, 2004.

Reason Waived: Approval of the exception for deconcentration was granted because since 2000 there has been investment of $109,350,000 in housing, commercial and retail projects in downtown Myrtle Beach. These projects include: Corporate Center I and II office park; Horry State Bank Myrtle Beach Headquarters; 84 Lumber; Quality Collision auto repair facility; United Equipment Rentals; three hotels; and three condominium/hotels. As a result, 500 jobs have been created in the census tract and it is anticipated that an additional 1,300 jobs will be created by the end of the decade. The new housing and economic development activity in census tract 506 was consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* Section II, Subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project Activity: New York City Housing Authority (NYCHA), New York, NY. The NYCHA requested an exception to the initial guidance since St. John's House II was located in a census tract with a poverty rate of 46.1 percent.

Nature of Requirement: Section II, Subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 14, 2004.

Reason Waived: Approval of the exception for deconcentration was granted since the project will be located in the Bronx Civic Center Neighborhood where more than $850 million of public and private dollars will be invested in housing, infrastructure improvements, recreation, transportation and overall revitalization of this neighborhood. Specific projects include the new Bronx Museum of the Arts ($10 million), Department of Transportation projects ($337 million), the 161st Street Station and Police Department District 11 Headquarters ($34 million), Criminal Court Complex ($250 million), the High School for Law, Government and Justice ($60 million) and Joyce Kilmer Park Phases III and IV ($2 million). The Criminal Court Complex will provide 800 new job opportunities. The revitalization investment and job opportunities in the neighborhood of this project are consistent with the goals of deconcentration.

Contact: Michael Dennis, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Rochester, NY, Housing Authority. A request was made to permit the Rochester Housing Authority to benefit from energy performance contracting for developments that have resident-paid utilities. The Rochester Housing Authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Rochester Housing Authority has resident-paid utilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Rochester Housing Authority requested a waiver based on the same approved methodology. The waiver permits the Authority to exclude from its Performance Funding System (PFS) calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Chris Kubacki, Director, Attn: Peggy Mangum, ext 3982, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center, 1280 Maryland Ave., SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932

• *Regulation:* 24 CFR 1000.214.

Project/Activity: The Kiowa Tribe of Oklahoma's submission of an Indian Housing Plan (IHP) for Fiscal Year (FY) 2004 funding made available under the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. The Tribe is located in Carnegie, OK.

Nature of Requirement: Section 1000.214 establishes a July 1st deadline

for the submission of an Indian Housing Plan.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 30, 2004.

Reason Waived: Due to tribal elections not occurring until June 19, 2004, and other pressing matters, the Kiowa Tribe did not have time to review the IHP prepared by the previous administration before submission. In addition, the Tribe did not yet have in place an official authorized to sign the Indian Housing Plan.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1625.

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Federal Register

Wednesday,
January 12, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for Petitions To List the Greater Sage-Grouse as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for Petitions To List the Greater Sage-Grouse as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for three petitions to list the greater sage-grouse (*Centrocercus urophasianus*) as threatened or endangered under the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information, we find that listing is not warranted. We ask the public to submit to us any new information that becomes available concerning the status of or threats to the species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on January 6, 2005. Although further listing action will not result from this finding, we request that you submit new information concerning the status of or threats to this species whenever it becomes available.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this 12-month finding, will be available for inspection, by appointment, during normal business hours at the Wyoming Ecological Services Field Office, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001. Submit new information, materials, comments, or questions concerning this species to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: The Wyoming Field Office (see **ADDRESSES** section above), by telephone at (307) 772–2374, by facsimile at (307) 772–2358, or by electronic mail at *fw6_sagegrouse@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that the action may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

On July 2, 2002, we received a petition from Craig C. Dremann requesting that we list the greater sage-grouse (*Centrocercus urophasianus*) as endangered across its entire range. We received a second petition from the Institute for Wildlife Protection on March 24, 2003 (Webb 2002) requesting that the greater sage-grouse be listed rangewide. On December 29, 2003, we received a third petition from the American Lands Alliance and 20 additional conservation organizations (American Lands Alliance *et al.*) to list the greater sage-grouse as threatened or endangered rangewide. On April 21, 2004, we announced our 90-day petition finding in the **Federal Register** (69 FR 21484) that these petitions taken collectively, as well as information in our files, presented substantial information indicating that the petitioned actions may be warranted. In accordance with section 4(b)(3)(A) of the Act, we have now completed a status review of the best available scientific and commercial information on the species, and have reached a determination regarding the petitioned action.

This status review of the greater sage-grouse does not address our prior finding with regard to the Columbia Basin distinct population segment (DPS). On May 7, 2001, we published a 12-month finding on a petition to list the Washington population of the western subspecies of the greater sage-grouse as a distinct population segment (DPS) (66 FR 22984). Our finding included a summary of the historic distribution of what we then considered to be the western subspecies of the greater sage-grouse (see ''Species Information'' below regarding taxonomy). In our finding we determined that the population segment that remains in central Washington met the requirements of our policy for recognition as a distinct population segment (61 FR 4722) and that listing the DPS was warranted but precluded by other higher priority listing actions. Because the population in central Washington occurs entirely within the historic distribution of sage-grouse within the Columbia Basin ecosystem, we referred to it as the Columbia Basin DPS (66 FR 22984; May 7, 2001). In subsequent candidate notices of review (CNORs), including the most recent one published in the **Federal Register** on May 4, 2004 (69 FR 24875), we found that a listing proposal for this DPS was still warranted but precluded by higher priorities. Since that time new information has become available through this status review of the greater sage-grouse. We will use the best scientific and commercial information available (including, but not limited to information that became available during this rangewide status review) to reevaluate whether the Columbia Basin population still qualifies as a DPS under our DPS policy, and if it does, whether the DPS still warrants a listing proposal. Once that evaluation is completed, we will publish an updated finding for the Columbia Basin population in the **Federal Register** either in the next CNOR or in a separate notice.

Responses to Comments Received

We received 889 responses to our request for additional information in our 90-day finding for the greater sage-grouse (69 FR 21484). Those responses which contained new, updated, or additional information were thoroughly considered in this 12-month finding. We received a large number of identical or similar comments. We consolidated the comments into several categories, and provide responses as follows.

Comment 1: It is premature for the Service to consider listing the sage-grouse until the impact of local and State conservation efforts are realized.

Response 1: The Service is required under section 4 of the Act to determine whether or not listing is warranted within 12 months of receiving a petition to list a species. By publishing a positive 90-day finding in April, 2004 (69 FR 21484), we were required by the Act to immediately proceed with the completion of a 12-month finding. We have examined ongoing and future conservation efforts in our status review. This included using our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (''PECE'') (68 FR 15100; March 28, 2003) to evaluate conservation efforts by State and local governments and other entities that have been planned but have not been implemented, or have been implemented but have not yet demonstrated effectiveness, to determine which such efforts met the standard in PECE for contributing to our finding. Our analysis of the best available scientific data revealed that the greater sage-grouse is not a threatened species, and in making this finding it was not necessary to rely on the contributions of any of the local, State, or other planned conservation efforts that met the standard in PECE. A

summary of our process with regard to PECE is provided in the section ''Status Review Process,'' below.

Comment 2: Listing the sage-grouse could have a negative impact on the conservation efforts being implemented by States for this species.

Response 2: We appreciate the fact that prior to acceptance of the listing petitions, States within the range of the greater sage-grouse are fully engaged in developing and implementing conservation efforts for this species, and we encourage them to continue these efforts. Conservation actions which have already been implemented have been considered in this decision. However, our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of population status and threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision.

Comment 3: The facts do not support the need for listing this species.

Response 3: The Service has considered all factors potentially affecting the greater sage-grouse in our decision and agree that the listing is not warranted. We have made our decision based on the best available scientific and commercial data, as required by the Act.

Comment 4: In most western states, sage-grouse populations have been fairly steady and in some cases, increasing over the past decade.

Response 4: The Service has considered population trends in all States and Provinces, and across the entire range of the species in our status review, including localized increases.

Comment 5: Locally managed efforts are best suited to preserve and protect the greater sage-grouse.

Response 5: We acknowledge that local conservation efforts for this species are important to long-term conservation, particularly given the widespread distribution and the variety of habitats and threats. However, most of these efforts have not yet been implemented, or have not been demonstrated to be effective. Conservation actions that have already been implemented and for which effectiveness is known have been considered in this decision. Our determination of whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision. There is no one best strategy for sage-grouse conservation and we encourage the continuation of all conservation efforts to conserve the greater sage-grouse. The Service continues to support the development of a Conservation Strategy for the Greater Sage-grouse by Western Association of Fish and Wildlife Agencies (WAFWA), and supports voluntary conservation as the most effective method to protect species and their habitats.

Comment 6: The recovery process under the Endangered Species Act has a very low success rate.

Response 6: Our decision regarding the greater sage-grouse is a listing, not a recovery decision. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not its potential for recovery under the Act. Therefore, this comment may not be considered in this finding.

Comment 7: If the greater sage-grouse is listed there will be a reduction of freedom and private property rights and public land use, and therefore a negative impact on the country. Listing the grouse will also result in economic damage to many entities.

Response 7: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential social or economic implications of listing. Therefore, this comment may not be considered in this finding.

Comment 8: There will be a loss of management options for the greater sage-grouse if this species is listed.

Response 8: We are not aware of any management options that are beneficial to the greater sage-grouse that would need to be eliminated if this species is listed under the Act-an action we believe to be not warranted at this time.

Comment 9: Listing the greater sage-grouse will divide and polarize local communities.

Response 9: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential socio-political implications of listing. Therefore, this comment may not be considered in this finding.

Comment 10: Listing the greater sage-grouse will increase the workload for the U.S. Fish and Wildlife Service.

Response 10: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential increase in workload for the Service. Therefore, this comment may not be considered in this finding.

Comment 11: Listing the greater sage-grouse will result in Federal budget limitations for other Federal agencies and projects.

Response 11: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential implications for the Federal budget of listing. Therefore, this comment may not be considered in this finding.

Comment 12: Conservation planning efforts and current Federal agency actions are sufficient to conserve the greater sage-grouse.

Response 12: We acknowledge that many Federal agencies are implementing conservation measures for the greater sage-grouse, and that several conservation efforts for this species are underway. Current federal conservation efforts have been reviewed and considered in our analysis. We evaluated planned conservation efforts under PECE (see Response 1); most of the planned conservation efforts for the greater sage-grouse have not yet been implemented. However, because our analysis of the best available scientific and commercial data revealed that the greater sage-grouse is not warranted for listing under the ESA, it was not necessary to evaluate whether the planned conservation efforts that met PECE reduced the threats to the species.

Comment 13: The petition was subjected to an independent analysis and serious problems were found with the science.

Response 13: Our 90-day finding was based on the determination that the three petitions submitted met the ''substantial information'' threshold as defined under section 4(b)(3)(A) of the Act. At the time of the 90-day finding, we did acknowledge that two of the three petitions contained some misstatements (69 FR 21484). However, the petitions were only one information source of many we used in our review for the 90-day finding. For the current 12-month finding, we conducted an exhaustive review of the scientific literature, and included State, industry, and Federal agency data. This finding does not rely on the petitions, but rather the best scientific and commercial data available, as required by the Act.

Comment 14: The Western Governor's Association report provides additional information which should be considered.

Response 14: The Western Governor's Association report was considered in this finding.

Comment 15: Many private sector groups are taking steps to protect sage-grouse habitat.

Response 15: We acknowledge that local conservation efforts for this species are important to long-term conservation and strongly support the continuation of these efforts. Most of the planned conservation efforts for the greater sage-grouse have not yet been implemented. As explained above, in making this finding it was not necessary to rely on the contributions of any of the local, State, or other planned conservation efforts that met the standard in PECE (*see* Response 1).

Comment 16: Scientific reports detailing the sage-grouse's decline consistently declare more work is necessary to adequately assess the status of sage-grouse populations.

Response 16: We agree that additional information on populations would be useful. However, as required by the Act, the Service must use the best scientific and commercial information available when making a 12-month finding. The law does not provide a mechanism for the Service to improve the available information.

Comment 17: Hunting is allowed in most states and provides a benefit to hunters and state wildlife programs without a negative impact on sage-grouse populations.

Response 17: At this time, it is unclear what area-specific impacts sage-grouse hunting has on sage-grouse populations. Most States are currently managing their populations in conformance with the WAFWA guidelines, which contain the most up-to-date guidelines for sage-grouse management. Our review indicated that regulated hunting of sage-grouse does not pose a threat that would lead to the likely endangerment of the species in the foreseeable future.

Comment 18: Now that there is a coordinated effort to further protect the species, there is no reason to suspect that this progress will not continue.

Response 18: We acknowledge that many Federal, State, and local working groups are implementing protective measures for the greater sage-grouse, and that several conservation efforts for this species are underway, have been planned, or are in the process of being planned. Most of the planned conservation efforts for the greater sage-grouse have not yet been implemented. As explained above, in making this finding it was not necessary to rely on the contributions of any of the local, State, or other planned conservation efforts that met the standard in PECE (*see* Response 1). We strongly encourage continued efforts to preserve and protect the greater sage-grouse and its habitat.

Comment 19: The Conservation Assessment of Greater Sage-grouse and Sagebrush Habitats provides additional information which should be considered.

Response 19: The Conservation Assessment of Greater Sage-grouse and Sagebrush Habitats report was considered in this finding.

Comment 20: The worst possible outcome is to list the sage-grouse.

Response 20: Our determination of whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision. We strongly encourage all efforts to conserve the greater sage-grouse and its habitat.

Comment 21: Predators are causing the decline of sage-grouse.

Response 21: We have considered the effects of predators and predator control in our sage-grouse analysis.

Comment 22: We need to consider the effects of hunting on sage-grouse.

Response 22: We have considered the effects of hunting in our sage-grouse analysis.

Comment 23: Sage-grouse are doing well in some areas and therefore, they should not be listed in those areas. Also, the Service should consider the need to list sage-grouse on a state-by-state basis.

Response 23: The petitions requested that we determine if the species needed to be listed across its entire range. Therefore, we have to consider the sage-grouse population range-wide. Additionally, our Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722) requires that in order to consider separate populations within a species for listing under the Act, such populations must (1) be discrete in relation to the remainder of the species to which it belongs, and (2) have biological and ecological significance for the taxon. We have received no information that suggests any population of the greater sage-grouse is isolated from conspecific populations, with the exception of the Columbia Basin population in central Washington. As described above, we previously determined that a proposal to list the Columbia Basin distinct population segment is warranted but precluded by other higher priority listing actions (66 FR 22984), and in the near future we will reevaluate that determination to consider new information, including (but not limited to) information available as a result of this status review and finding on petitions to list the greater sage-grouse.

Comment 24: Drought and other weather conditions have had a major effect on sage-grouse populations.

Response 24: We acknowledge that drought and other weather conditions are a natural occurrence in the west and we have considered the effects of drought in our sage-grouse analysis.

Comment 25: It was interesting to see flocks of dozens of grouse near fences, since conventional wisdom sees fences as perches for raptors and hence areas of avoidance for raptor-wary grouse.

Response 25: We acknowledge that raptors do use fences as perch sites. Sage-grouse tend to avoid perch sites like fences but threats of raptors do not totally exclude sage-grouse use of habitat near fences.

Comment 26: The size of sage-grouse populations can be affected by habitat condition.

Response 26: We acknowledge that habitat conditions can affect local sage-grouse numbers. We have considered this information in the finding.

Comment 27: Disease is a natural event that may be negatively affecting sage-grouse.

Response 27: We have considered the effects of disease on greater sage-grouse in this finding. As identified in the Act, it is one of the threat factors we are required to consider in our status review.

Comment 28: Listing the greater sage-grouse will remove the flexibility of local planning efforts.

Response 28: We recognize that listing may affect local planning efforts, due to its effect on voluntary conservation efforts. However, we may not consider those effects under this status review.

Comment 29: Maintaining and improving habitat is the answer to increasing sage-grouse numbers.

Response 29: We concur that maintaining habitat is important for the long-term conservation of the greater sage-grouse. We strongly encourage efforts to conserve sage-grouse and sagebrush habitat.

Comment 30: Greater sage-grouse numbers and distribution have significantly declined since 1900.

Response 30: The information pertaining to the status and distribution of the greater sage-grouse has been reviewed and incorporated in our analysis. Sage-grouse abundance has been scientifically documented as declining since the 1950s, but the rate of decline has decreased since the 1980s and in some places has stabilized, or even increased.

Comment 31: Destructive land use practices and management on public and private lands are negatively affecting the greater sage-grouse.

Response 31: We have considered the effects of various uses of private and public lands on the status of the greater sage-grouse in this finding.

Comment 32: Negative impacts to the greater sage-grouse continue irrespective of efforts by State and local working groups.

Response 32: Most State and local working group conservation efforts for the greater sage-grouse have not yet been implemented, and the certainty of implementation and effectiveness of such efforts is unclear. However, we have considered all conservation efforts which have been implemented and shown to be effective. As explained above, in making this finding it was not necessary to rely on the contributions of any of the local, state, or other planned conservation efforts that met the standard in PECE (*see* Response 1).

Comment 33: Listing the sage-grouse would affect much-needed land management reform.

Response 33: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential land management implications of listing. Therefore, this comment may not be considered in this finding.

Comment 34: The ESA requires that listing decisions be based solely on the best science and biological information about the species and its habitats.

Response 34: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act.

Comment 35: Meaningful regulatory mechanisms are non-existent and existing management is inadequate to conserve the bird.

Response 35: We have considered existing regulatory mechanisms and management activities in this finding.

Comment 36: Only listing the greater sage-grouse under the Endangered Species Act will save the birds and its habitat.

Response 36: Our determination of whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision. We strongly encourage all efforts to conserve the greater sage-grouse and its habitat.

Comment 37: Listing the greater sage-grouse would benefit a variety of other sagebrush obligates and sagebrush-dependent species.

Response 37: This finding is for the greater sage-grouse only. Therefore, we cannot consider the potential impact of listing the greater sage-grouse on the status of other sagebrush-dependent species in our decision.

Comment 38: The WAFWA Conservation Assessment is disturbing in that its findings show a wide discrepancy in how States monitor greater sage-grouse.

Response 38: The WAFWA Conservation Assessment represents one component of the best available scientific and commercial data that we used in our analysis, as required by the Act. The fact that the States vary somewhat in how they conduct monitoring of this species was considered in this finding.

Comment 39: The loss of small populations of sage-grouse increases the species' risk of extinction when the species occurs primarily in spread out, island-like patches of habitat.

Response 39: We have considered the effects of small population sizes and isolated populations in our finding.

Comment 40: Current regulatory frameworks are sufficient to protect the greater sage-grouse.

Response 40: We have considered existing regulatory mechanisms and management activities in this finding and determined that existing regulatory protections in combination with the existing threats do not warrant listing the greater sage-grouse range-wide.

Comment 41: Grazing is good for sage-grouse. Improvements to grazing practices have been positive for sage-grouse.

Response 41: We have considered all aspects of grazing impacts on the greater sage-grouse in our finding.

Comment 42: Listing the greater sage-grouse will curtail energy development.

Response 42: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential land management implications of listing. We did evaluate the threat of energy development to greater sage-grouse in this finding.

Comment 43: ESA is prohibitively expensive to implement.

Response 43: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential cost of listing. Therefore, this comment may not be considered in this finding.

Comment 44: There is adequate funding available for future conservation efforts for the greater sage-grouse.

Response 44: We evaluated the certainty of funding for future conservation efforts as part of our evaluation of efforts that were subject to PECE. We encourage the continued implementation of conservation efforts for the greater sage-grouse.

Comment 45: We have additional information for your analysis.

Response 45: All relevant additional, new, or updated information received in comments submitted was thoroughly considered in this 12-month finding.

Comment 46: We have information regarding proposed actions for your analysis.

Response 46: We have examined proposed actions, consistent with PECE (68 FR 15100) in our status review. Our analysis of the best available scientific and commercial data revealed that listing the greater sage-grouse as threatened or endangered is not warranted, and in making this finding it was not necessary to rely on the

contribution of any of the local, State, or other planned conservation efforts that met the standard in PECE (*see* Response 1).

Comment 47: The Service's 90-day finding did not consider all available information.

Response 47: For a 90-day finding, we are required to review the information in the petition(s), our files, and any information provided by States and Tribes. Based upon this information, the Service determines whether there is substantial information indicating that further review is necessary. We are required to consider the best available scientific and commercial data in our 12-month status review. This finding represents our conclusions based on that information.

Comment 48: Falconers take very few sage-grouse. They are a preferred species for only one extremely specialized form of falconry.

Response 48: We have considered this information in our analysis.

Comment 49: If the Service determines that listing the sage-grouse is appropriate, they will have to designate critical habitat.

Response 49: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision. We designate critical habitat for listed species as required by the Act.

Comment 50: The Service must consider the status of the sage-grouse across the entirety of its range.

Response 50: We have considered the status of the greater sage-grouse across the entirety of its range, as petitioned.

Comment 51: We do not believe that the designation of the Washington population of sage-grouse as a Distinct Population Segment (DPS) is appropriate.

Response 51: This status review of the greater sage-grouse does not address our prior finding with regard to the Columbia Basin distinct population segment (DPS). New information which has become available through this status review of the greater sage-grouse will be considered when we re-evaluate the status of the Columbia Basin population, either through an updated finding or in the next Candidate Notice of Review.

Comment 52: Managing agencies lack Best Management Practices due to the lack of support, manpower, and funding.

Response 52: We acknowledge that the extent of support, manpower, and funding may influence some aspects of the implementation of Best Management Practices (BMPs) for sage-grouse. As currently described, most BMPs are very broadly stated mitigation measures that involve incorporating project design features when various resource management activities are planned, in order to reduce or avoid impacts to species.

Comment 53: Industry has implemented many mitigation and protection measures for sage-grouse.

Response 53: We acknowledge that industries are implementing some mitigation and protective measures for sage-grouse. We evaluated all such information that was available to us. We strongly encourage the continuation of all efforts to conserve the greater sage-grouse and its habitat.

Comment 54: Listing the sage-grouse could have profound impacts on a number of military facilities.

Response 54: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, not the potential impact of listing on military facilities. Therefore, this comment may not be considered in this finding.

Comment 55: Loss of habitat to cheatgrass and juniper invasion are major threats to sage-grouse habitat. The technologies and know-how exist to eliminate or reduce the cheatgrass and juniper invasion trends.

Response 55: We acknowledge that cheatgrass and juniper invasions are threats to sage-grouse habitats. Currently, technologies have been developed or are being developed to treat problems of cheatgrass and juniper invasions. Our review found mixed results in the current technologies' ability to treat cheatgrass and juniper problems.

Comment 56: Historic declines and habitat loss are not relevant to the current listing decision.

Response 56: Our decision regarding the greater sage-grouse is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision, including information on historic declines and habitat loss to the extent that they contribute to current threats.

Comment 57: There is no peer-reviewed science to support a listing.

Response 57: We have reviewed scientific, peer-reviewed literature in our analysis, as well as commercial and unpublished data. The cumulative review of this information was used to determine if the greater sage-grouse warrants listing under the Endangered Species Act.

Comment 58: Most sage-grouse habitat loss due to agriculture (*i.e.*, conversion to cropland, seeding to crested wheatgrass, etc.) has been eliminated or greatly reduced. Large-scale conversions to agriculture are decreasing.

Response 58: We acknowledge that there have been changes in the rate of loss of sage-grouse habitat due to various agricultural conversions. We have considered this information in our analysis.

Comment 59: The Service must consider all listing factors when making a determination.

Response 59: Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, the species' population status, and the status and trend of the species' habitat as they are known at the time of the decision. We consider the effects of all threats on the status of the species when we make our determination.

Comment 60: Present habitat provides the necessary elements to sustain a highly viable sage-grouse population.

Response 60: We have considered existing habitat conditions for the greater sage-grouse throughout its range in this finding.

Comment 61: There is insufficient funding available to adequately fund existing and proposed conservation plans for the greater sage-grouse.

Response 61: We have examined ongoing and future conservation efforts in our status review. We have examined proposed actions, consistent with PECE (68 FR 15100), in our status review, and this included consideration of funding, consistent with one of the criteria in PECE. (*See also* Response 1, above).

Comment 62: Wildfire is a threat to sage-grouse habitat and can result in habitat elimination across the species' range.

Response 62: We have considered the effects of wildfire on sage-grouse habitat in this finding.

Information Quality Act

In addition to the comments received, two Information Quality Act challenges were submitted. The challenge received from the Partnership for the West was addressed through a response directly to that organization. The second challenge from the Owyhee County Commissioners (Idaho) primarily stated that we failed to conduct an exhaustive search of all scientific literature, and other information in the completion of our 90-day finding. Section 4(b)(3)(A) of the Act only requires that the petitions present ''substantial scientific or commercial information indicating that the petitioned action may be warranted.'' The Act does not require an exhaustive search of all available information at that time. Other concerns identified in the Owyhee County Commissioner's challenge are addressed in our comment responses above, and an overall summary regarding the steps we have taken to ensure conformance with our Information Quality Guidelines is provided below.

The Service's Information Quality Guidelines define quality as an encompassing term that includes utility, objectivity, and integrity. Utility refers to the usefulness of the information to its intended users, including the public. Objectivity includes disseminating information in an accurate, clear, complete, and unbiased manner and ensuring accurate, reliable, and unbiased information. If data and analytic results have been subjected to formal, independent, external peer review, we generally will presume that the information is of acceptable objectivity. Integrity refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

The Service conducted a thorough pre-dissemination review of the data it is relying on to make this 12-month finding. In particular, the Service used the information in the WAWFA Conservation Assessment, which is a peer-reviewed science document. The WAWFA assessment was based on data provided by the states, provinces, land management agencies, as well as data in published, peer-reviewed manuscripts and other verified sources available to the authors of the assessment. The draft final assessment was reviewed by State agency wildlife biologists to ensure that data submitted by each State were presented accurately and completely. The assessment also was peer reviewed by an independent group of scientists selected by the Ecological Society of America. These reviewers were experts from academia, government, and non-governmental organizations, and included researchers as well as wildlife managers.

The WAWFA Conservation Assessment assembles in one place almost all of the available pertinent data that addresses the current biological and ecological condition of the sage-grouse and its habitat. This compilation of material allows the public to see a large body of information all in one document, making the information more useful than the many separate sources of information would be. Since the document has been subject to an independent, external peer review, the Service believes it is of acceptable objectivity. For these reasons the Service believes this information meets our Information Quality Guidelines.

Status Review Process

Section 4(b)(1)(A) of the Act requires us to consider the best scientific and commercial data available as well as efforts being made by States or other entities to protect a species when making a listing decision. To meet this standard we systematically collected information on the greater sage-grouse, its habitats, and environmental factors affecting the species, from a wide array of sources. The scientific literature on greater sage-grouse and sagebrush habitats is extensive. In addition we received a substantial amount of unpublished information from other Federal agencies, States, private industry and individuals. We also solicited information on all Federal, State, or local conservation efforts currently in operation or planned for either the greater sage-grouse or its habitats.

The current distribution of greater sage-grouse and sagebrush habitat encompasses parts of 11 states in the western United States and 2 Canadian provinces (Figure 1). This large geographical scale combined with major ecological differences in sagebrush habitat and myriad of activities occurring across this large area required that the Service employ a structured analysis approach. Given the very large body of information available to us for our decision, structuring our analysis ensured we could explicitly assess the relative risk of changes occurring across the range of the sage-grouse, and integrate those individual assessments, be they regional or rangewide in nature, into an estimate of the probability that sage-grouse would go extinct at defined timeframes in the future. Using such extinction risk analysis to frame listing decisions under the Act has been recommended (National Research Council 1995), and was adopted by the Service as an important component of a structured analysis of the status review of the greater sage-grouse.

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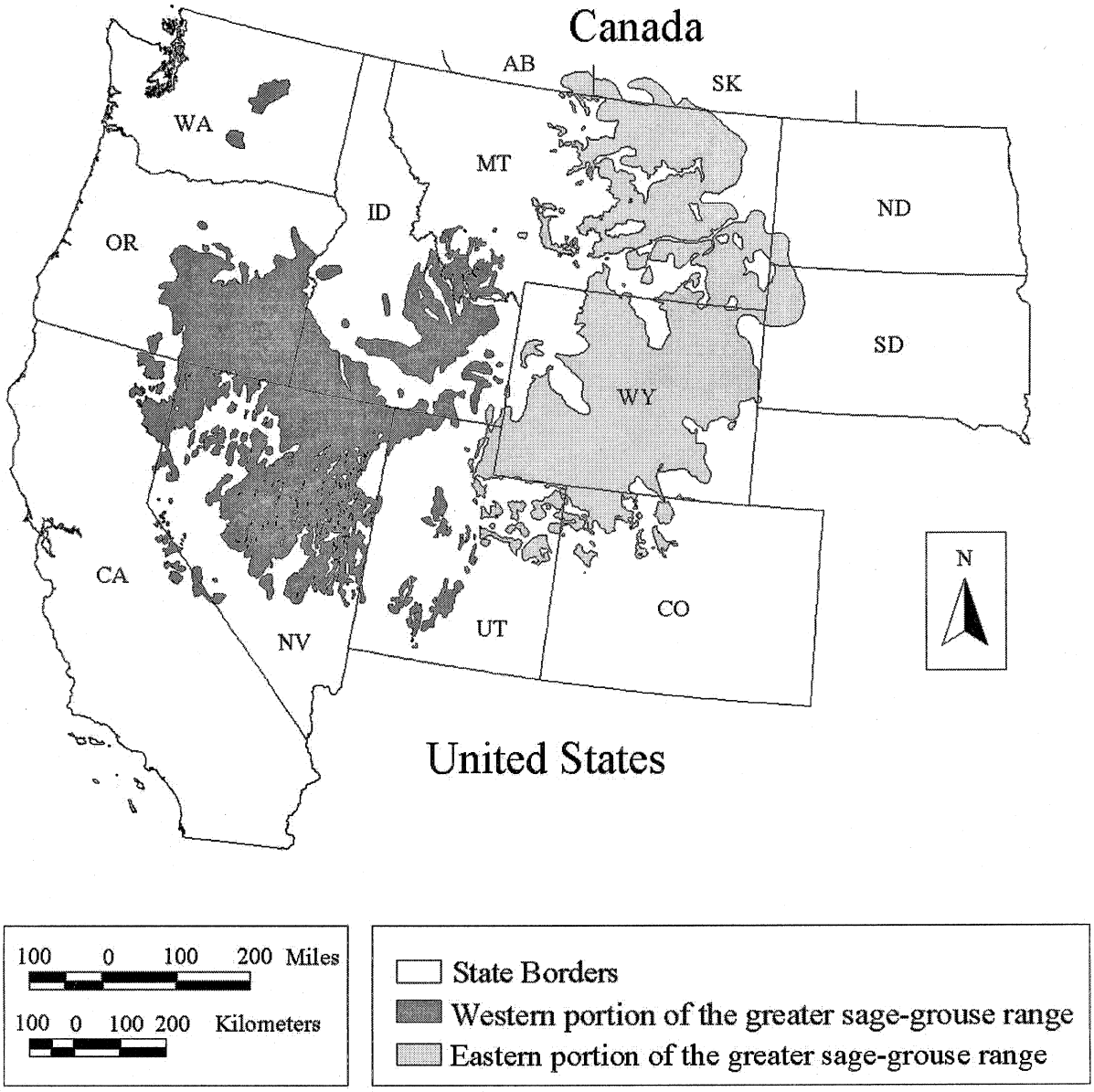
Figure 1. Current distribution of greater sage-grouse in North America (AB = Alberta, CA = California, CO = Colorado, ID = Idaho, MT = Montana, ND = North Dakota, NV = Nevada, OR = Oregon, SD = South Dakota, SK = Saskatchewan, UT = Utah, WA = Washington, WY = Wyoming)



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As part of the structuring of this status review, the Service compiled from the best scientific and commercial data available a summary of the changes or impacts occurring to the sagebrush ecosystem that could potentially affect the sage-grouse directly or indirectly. This summary, or synthesis of biological information, was one of many sources of information provided to a panel of seven experts, who, through a two-day facilitated process discussed threats to the species and each generated an estimate of extinction risk for the greater sage-grouse at different timeframes in the future. This information and all other available information were then considered by Service biologists and managers to frame a listing recommendation, and ultimately the decision reported in this finding.

Expert panels are not a required component of structured analysis but are used to help inform decision makers when there is uncertainty (National Research Council 1995). Typically, this uncertainty is due to a lack of information. While the scientific information on greater sage-grouse and their habitats is extensive, substantial gaps and uncertainty remain in the scientific community's knowledge of all the factors that may affect sage-grouse populations across such a wide geographical range encompassing major ecological differences in sagebrush habitats. Further, scientific knowledge of how the species may respond to those factors over time is incomplete. For these reasons, we requested input from scientific experts outside the Service to help us make a reasonable projection of the species' potential extinction risk. The panel consisted of experts in sage-grouse biology and ecology, sagebrush community ecology, and range ecology and management.

The organization of this finding reflects this basic approach. We first describe in more detail the structured process; present a summary of the threats to the species organized according to the 5 listing factors in the Act; then we present results from the facilitated expert panel process, including estimates of extinction risk; and finally present how a team of Service biologists and managers interpreted the extinction risk analysis, the threat ranking of the expert panelists, and other available information in the context of a listing decision under the Act. In order to ensure that the process we used to reach our finding is transparent, discussion of the biological significance of each threat listed under the 5 listing factors, and the geographical scale at which they affect sage-grouse is based on results of the expert panel and decision support team process. A thorough description of this process and its results is presented later in the finding along with the decision support team's evaluation of the threats in the context of a listing decision under the Act. However, we felt it was important to include a brief discussion of the spatial and biological significance of each threat as they are presented by listing factor.

Following compilation of the best available scientific and commercial information, which is summarized in other sections of this finding and available in full in our administrative record, we conducted three phases of information synthesis and evaluation. First, the information on individual planned conservation efforts was evaluated under PECE to determine which efforts met the following standard in PECE: ''To consider that a formalized conservation effort(s) contributes to forming a basis for not listing a species or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis'' (*see* 68 FR 15115). Second, we completed a structured analysis of greater sage-grouse extinction risk including the evaluation of all factors that may be contributing to the species' population trends and the likelihood of the species' extinction at various timeframes into the future. Finally, we evaluated whether the available information on status, trends, ongoing conservation efforts, and potential extinction risk indicate that the greater sage-grouse should be listed as a threatened or endangered species. We further structured these three phases by differentiating two distinct stages of the status review: (1) A risk analysis phase which consisted of compiling biological information, conducting the PECE analysis, and assessing the risk of extinction of greater sage-grouse, and (2) a risk management phase where a decision support team of senior Service biologists and managers evaluated whether or not the potential threats identified as part of our section 4(a)(1) analysis, and summarized in this finding, are significant enough to qualify the greater sage-grouse as a threatened or endangered species under the Act.

For the PECE analysis, we received and reviewed 27 plans, or conservation strategies, outlining more than 300 individual efforts. Most of the plans were from States, but we also received information from the Department of Energy (DOE), Bureau of Land Management (BLM), U.S. Forest Service (USFS), Department of Defense (DOD), Natural Resources Conservation Service (NRCS), Western Governor's Association (WGA), and the North American Grouse Partnership (NAGP).

Each effort within each plan was evaluated under PECE, which provides a framework and criteria for evaluating conservation efforts that have not yet been implemented or have not yet demonstrated whether they are effective at the time of a listing decision. Recognizing that the certainty of implementation and effectiveness of various efforts within a conservation plan, strategy, or agreement may vary, PECE requires that we evaluate each effort individually, and the policy provides criteria to direct our analysis. PECE specifies that ''Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered'' (*see* 68 FR 15115). As described above, when determining whether or not a species warrants listing, with regard to conservation efforts that are subject to PECE we may only consider those efforts that we are sufficiently certain to be implemented and effective so as to have contributed to the elimination or reduction of one or more threats to the species. Using the criteria provided in PECE, we determined that 20 of the individual efforts we evaluated met the standard for being sufficiently certain to be implemented and effective in reducing threats. Hence, we included those 20 efforts in the information used for the extinction risk evaluation.

The expert panelists participated together in a series of facilitated exercises and discussions addressing first the species' inherent biological vulnerability and resilience, then the potential, relative influence of extrinsic or environmental factors on populations, and finally the experts' projections of extinction risk at different geographical scales both with and without the 20 planned conservation efforts from the PECE analysis. The Service would only consider the effect of the conservation efforts that met PECE in our decision if our review of the best available scientific and commercial data revealed that listing the greater sage-grouse under the Act was warranted. The experts participated only in the assessment of biological and environmental factors and related extinction risk without any consideration or discussion of the petition or regulatory classification of

the species. Structuring of the assessment facilitated thorough and careful deliberation by the experts and observing Service biologists and managers on the decision support team, including clarification of what information was critical to forming the experts' views of, where knowledge gaps and areas of uncertainty exist, and confidence experts felt in the biological judgments they expressed. Structuring also facilitated independent contributions from the experts.

In the final status review stage, following the compilation of biological information, PECE analysis of conservation efforts, and the facilitated extinction risk assessment by the expert panel, Service biologists and managers met and conducted a separate facilitated process to assess whether or not the threats to the greater sage-grouse described in this finding were significant enough at this time to meet the definition of a threatened or endangered species under the Act. Specific results from both the facilitated risk analysis stage of the status review and the facilitated risk management stage of the status review are presented later in the finding to clarify how the Service reached its decision. The Service's finding considered all of the available information on record.

Species Information

The sage-grouse is the largest North American grouse species. Adult males range in length from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)). Adult females range in length from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males exhibit olive-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999).

In 2000, the species was separated into 2 distinct species, the greater sage-grouse (*C. urophasianus*) and the Gunnison sage-grouse (*C. minimus*) based on genetic, morphological and behavioral differences (Young *et al.* 2000). This finding only addresses the greater sage-grouse.

Although the American Ornithological Union (AOU) recognizes two subspecies of the greater sage-grouse, the eastern (*C. u. urophasianus*) and western (*C. u. phaios*), based on research by Aldrich (1946), recent genetic analyses do not support this delineation (Benedict *et al.* 2003; Oyler-McCance *et al.* in press). There are no known delimiting differences in habitat use, natural history, or behavior between the two subspecies. Therefore, the Service no longer acknowledges the subspecies designation (68 FR 6500; February 7, 2003; 69 FR 933; January 7, 2004).

Sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle, and are considered obligate users of several species of sagebrush (*e.g.,* Wyoming big sagebrush (*Artemisia tridentata wyomingensis*), mountain big sagebrush (*A. t. vaseyana*), and basin big sagebrush (*A. t. tridentata*) (Patterson 1952; Braun *et al.* 1976; Connelly *et al.* 2000a; Connelly *et al.* 2004)). Sage-grouse also use other sagebrush species such as low sagebrush (*A. arbuscula*), black sagebrush (*A. nova*), fringed sagebrush (*A. frigida*) and silver sagebrush (A. cana) (Schroeder *et al.* 1999; Connelly *et al.* 2004). Thus, sage-grouse distribution is strongly correlated with the distribution of sagebrush habitats (Schroeder *et al.* 2004). While sage-grouse are dependent on large, interconnected expanses of sagebrush (Patterson 1952; Connelly *et al.* 2004), information is not available regarding minimum sagebrush patch sizes required to support populations of sage-grouse. Sage-grouse exhibit strong site fidelity (loyalty to a particular area) for breeding and nesting areas (Connelly *et al.* 2004).

During the spring breeding season, male sage-grouse gather together to perform courtship displays on display areas called leks. Areas of bare soil, short-grass steppe, windswept ridges, exposed knolls, or other relatively open sites may serve as leks (Patterson 1952; Connelly *et al.* 2004 and references therein). Leks are often surrounded by denser shrub-steppe cover, which is used for escape, thermal and feeding cover. Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly *et al.* 2000a), and therefore lek habitat availability is not considered to be a limiting factor for sage-grouse (Schroeder 1997). Leks range in size from less than 0.04 hectare (ha) (0.1 acre (ac)) to over 36 ha (90 ac) (Connelly *et al.* 2004) and can host from several to hundreds of males (Johnsgard 2002). Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. A relatively small number of dominant males accounts for the majority of breeding on each lek (Schroeder *et al.* 1999).

Sage-grouse typically select nest sites under sagebrush cover, although other shrub or bunchgrass species are sometimes used (Klebenow 1969; Connelly *et al.* 2000a; Connelly *et al.* 2004). The sagebrush understory of productive nesting areas contains native grasses and forbs, with horizontal and vertical structural diversity that provides an insect prey base, herbaceous forage for pre-laying and nesting hens, and cover for the hen while she is incubating (Gregg 1991; Schroeder *et al.* 1999; Connelly *et al.* 2000a; Connelly *et al.* 2004). Shrub canopy and grass cover provide concealment for sage-grouse nests and young, and are critical for reproductive success (Barnett and Crawford 1994; Gregg *et al.* 1994; DeLong *et al.*1995; Connelly *et al.* 2004). Vegetation characteristics of nest sites, as reported in the scientific literature have been summarized by Connelly *et al.* (2000a). Females have been documented to travel more than 20 km (12.5 mi) to their nest site after mating (Connelly *et al.* 2000a), but distances between a nest site and the lek on which breeding occurred is variable (Connelly *et al.* 2004). While earlier studies indicated that most hens nest within 3.2 km (2 mi) of a lek, more recent research indicates that many hens actually move much further from leks to nest based on nesting habitat quality (Connelly *et al.* 2004). Research by Bradbury *et al.* (1989) and Wakkinen *et al.* (1992) demonstrated that nest sites are selected independent of lek locations.

Sage-grouse clutch size ranges from 6 to 13 eggs (Schroeder *et al.* 2000). Nest success (one or more eggs hatching from a nest), as reported in the scientific literature, ranges from 15 to 86 percent of initiated nests (Schroeder *et al.* 1999), and is typically lower than other prairie grouse species (Connelly *et al.* 2000a) and therefore indicative of a lower intrinsic (potential) population growth rate than in most game bird species (Schroeder *et al.* 1999). Renesting rates following nest loss range from 5 to 41 percent (Schroeder 1997).

Hens rear their broods in the vicinity of the nest site for the first 2 to 3 weeks following hatching (Connelly *et al.* 2004). Forbs and insects are essential nutritional components for chicks (Klebenow and Gray 1968; Johnson and Boyce 1991; Connelly *et al.* 2004). Therefore, early brood-rearing habitat must provide adequate cover adjacent to areas rich in forbs and insects to assure chick survival during this period (Connelly *et al.* 2004).

Sage-grouse move from sagebrush uplands to more mesic areas during the late brood-rearing period (3 weeks post-hatch) in response to summer desiccation of herbaceous vegetation (Connelly *et al.* 2000a). Summer use areas can include sagebrush habitats as well as riparian areas, wet meadows and alfalfa fields (Schroeder *et al.* 1999). These areas provide an abundance of forbs and insects for both hens and chicks (Schroeder *et al.* 1999; Connelly *et al.* 2000a). Sage-grouse will use free water although they do not require it since they obtain their water needs from the food they eat. However, natural water bodies and reservoirs can provide mesic areas for succulent forb and insect production, thereby attracting sage-grouse hens with broods (Connelly *et al.* 2004). Broodless hens and cocks will also use more mesic areas in close proximity to sagebrush cover during the late summer (Connelly *et al.* 2004).

As vegetation continues to desiccate through the late summer and fall, sage-grouse shift their diet entirely to sagebrush (Schroeder *et al.* 1999). Sage-grouse depend entirely on sagebrush throughout the winter for both food and cover. Sagebrush stand selection is influenced by snow depth (Patterson 1952; Connelly 1982 as cited in Connelly *et al.* 2000a), and, in some areas, topography (Beck 1977; Crawford *et al.* 2004).

Many populations of sage-grouse migrate between seasonal ranges in response to habitat distribution (Connelly *et al.* 2004). Migration can occur between winter and breeding/summer areas, between breeding, summer and winter areas, or not at all. Migration distances of up to 161 kilometers (km) (100 mi) have been recorded (Patterson 1952); however, average individual movements are generally less than 34 km (21 mi) (Schroeder *et al.* 1999). Migration distances for female sage-grouse generally are less than for males (Connelly *et al.* 2004). Almost no information is available regarding the distribution and characteristics of migration corridors for sage-grouse (Connelly *et al.* 2004). Sage-grouse dispersal (permanent moves to other areas) is poorly understood (Connelly *et al.* 2004) and appears to be sporadic (Dunn and Braun 1986).

Sage-grouse typically live between 1 and 4 years, but individuals up to 10 years of age have been recorded in the wild (Schroeder *et al.* 1999). Juvenile survival (from hatch to first breeding season) is affected by food availability, habitat quality, harvest, and weather. Documented juvenile survival rates have ranged between 7 and 60 percent in a review of many field studies (Crawford *et al.* 2004). The average annual survival rate for male sage-grouse (all ages combined) documented in various studies ranged from 38 to 60 percent (Schroeder *et al.* 1999), and for females 55 to 75 percent (Schroeder 1997; Schroeder *et al.* 1999). Survival rates are high compared with other prairie grouse species (Schroeder *et al.* 1999). Higher female survival rates account for a female-biased sex ratio in adult birds (Schroeder 1997; Johnsgard 2002). Although seasonal patterns of mortality have not been thoroughly examined, over-winter mortality is low (Connelly *et al.* 2004).

Range and Distribution

Prior to settlement of the western North America by European immigrants in the 19th century, greater sage-grouse lived in 13 States and 3 Canadian provinces—Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Nebraska, Arizona, British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 1999; Young *et al.* 2000; Schroeder *et al.* 2004). Sagebrush habitats that potentially supported sage-grouse occurred over approximately 1,200,483 km2 (463,509 mi2) before 1800 (Schroeder *et al.* 2004). Currently, sage-grouse occur in 11 States and 2 Canadian provinces, ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. Sage-grouse have been extirpated from Nebraska, British Columbia, and possibly Arizona (Schroeder *et al.* 1999; Young *et al.* 2000; Schroeder *et al.* 2004). Current distribution of the greater sage-grouse is estimated at 668,412 km2 (258,075 mi2) or 56 percent of the potential pre-settlement distribution (Schroeder *et al.* 2004; Connelly *et al.* 2004). The vast majority of the current distribution of the greater sage-grouse is within the United States.

Estimates of current total sage-grouse abundance vary, but are all much lower than the historical estimates of a million or more birds. Braun (1998) estimated that the 1998 rangewide spring population numbered about 142,000 sage-grouse, derived from numbers of males counted on leks. The Service estimated the rangewide abundance of sage-grouse in 2000 was at least 100,000 (taken from Braun (1998)) and up to 500,000 birds (based on harvest data from Idaho, Montana, Oregon and Wyoming, with the assumption that 10 percent of the population is typically harvested) (65 FR 51578). Survey intensity has increased markedly in recent years and, in 2003, more than 50,000 males were counted on leks (Connelly *et al.* 2004). Therefore, Connelly *et al.* (2004) concluded that rangewide population numbers in 2003 were likely much greater than the 142,000 estimated in 1998 but was unable to generate a rangewide population estimate. Sampling methods used across the range of the sage-grouse differ, resulting in too much variation to reliably estimate sage-grouse numbers (Connelly *et al.* 2004). Since neither pre-settlement nor current numbers of sage-grouse are known with complete precision, the actual rate and extent of decline cannot be exactly estimated.

Periods of historical decline in sage-grouse abundance occurred from the late 1800s to the early-1900s (Hornaday 1916; Crawford 1982; Drut 1994; Washington Department of Fish and Wildlife 1995; Braun 1998; Schroeder *et al.* 1999). Other declines in sage-grouse populations apparently occurred in the 1920s and 1930s, and then again in the 1960s and 1970s (Connelly and Braun 1997; Braun 1998). State wildlife agencies were sufficiently concerned with the decline in the 1920s and 1930s that many closed their hunting seasons and others significantly reduced bag limits and season lengths (Braun 1998) as a precautionary measure.

Following review of published literature and anecdotal reports, Connelly *et al.* (2004) concluded that the abundance and distribution of sage-grouse have declined from pre-settlement numbers to present abundance. Most of the historic population changes were the result of local extirpations, which has been inferred from a 44 percent reduction in sage-grouse distribution described by Schroeder *et al.* 2004 (Connelly *et al.* 2004). In an analysis of lek counts, Connelly *et al.* (2004) found substantial declines from 1965 through 2003. Average declines were 2 percent of the population per year from 1965 to 2003. The decline was more dramatic from 1965 through 1985, with an average annual change of 3.5 percent. Sage-grouse population numbers in the late 1960s and early 1970s were likely two to three times greater than current numbers (Connelly *et al.* 2004). However, the rate of decline rangewide slowed from 1986 to 2003 to 0.37 percent annually, and some populations increased (Connelly *et al.* 2004).

According to Connelly *et al.* (2004), of 41 populations delineated rangewide on geographical, not political boundaries, 5 have been extirpated and 14 are at high risk of extirpation due to small numbers (only one active lek). Twelve additional

populations also have small numbers (7 to 18 known active leks), and 9 of those are declining at a statistically significant rate. However, the remaining 10 populations contained the majority (92 percent) of the known active leks and were distributed across the current range. Five of these populations were so large and expansive that they were divided into 24 subpopulations to facilitate the analysis for a rangewide assessment (Connelly *et al.* 2004).

Habitat

Sagebrush is the most widespread vegetation in the intermountain lowlands in the western United States (West and Young 2000). Scientists recognize many species and subspecies of sagebrush (Connelly *et al.* 2004), each with unique habitat requirements and responses to perturbations (West and Young 2000). Sagebrush species and subspecies occurrence in an area is dictated by local soil type, soil moisture, and climatic conditions (West 1983; West and Young 2000), and the degree of dominance by sagebrush varies with local site conditions and disturbance history. Plant associations, typically defined by perennial grasses, further define distinctive sagebrush communities (Miller and Eddleman 2000; Connelly *et al.* 2004), and are influenced by topography, elevation, precipitation and soil type.

All species of sagebrush produce large ephemeral leaves in the spring, which persist until soil moisture stress develops in the summer. Most species also produce smaller, over-wintering leaves in the late spring that last through summer and winter. Sagebrush have fibrous, tap root systems, which allow the plants to draw surface soil moisture, but also access water deep within the soil profile when surface water is limiting (West and Young 2000). Most sagebrush flower in the fall. However, during years of drought or other moisture stress, flowering may not occur. Although seed viability and germination are high, seed dispersal is limited. Additionally, for unknown reasons, sagebrush seeds do not persist in seed banks beyond the year of their production (West and Young 2000).

Sagebrush are long-lived, with plants of some species surviving up to 150 years (West 1983). They produce allelopathic chemicals that reduce seed germination, seedling growth and root respiration of competing plant species and inhibit the activity of soil microbes and nitrogen fixation. Sagebrush has resistance to environmental extremes, with the exception of fire and occasionally defoliating insects (*e.g.*, the webworm (*Aroga* spp.; West 1983)). Most species of sagebrush are killed by fire (Miller and Eddleman 2000; West 1983; West and Young 2000). Natural sagebrush re-colonization in burned areas depends on the presence of adjacent live plants for a seed source or on the seed bank, if present (Miller and Eddleman 2000).

Sagebrush is typically divided into two groups, big sagebrush and low sagebrush, based on their affinities for different soil types (West and Young 2000). Big sagebrush species and subspecies are limited to coarse-textured and/or well-drained sediments, whereas low sagebrush subspecies typically occur where erosion has exposed clay or calcified soil horizons (West 1983; West and Young 2000). Reflecting these soil differences, big sagebrush will die if surfaces are saturated long enough to create anaerobic conditions for 2 to 3 days (West and Young 2000). Some of the low sagebrush are more tolerant of occasionally supersaturated soils, and many low sage sites are partially flooded during spring snowmelt. None of the sagebrush taxa tolerate soils with high salinity (West and Young 2000). Both groups of sagebrush are used by sage-grouse.

The response of sagebrush and sagebrush ecosystems to natural and human-influenced disturbances varies based on the species of sagebrush and its understory component, as well as abiotic factors such as soil types and precipitation. For example, mountain big sagebrush can generally recover more quickly and robustly following disturbance than Wyoming big sagebrush (Miller and Eddleman 2000), likely due to its occurrence on moist, well drained soils, versus the very dry soils typical of Wyoming big sagebrush communities. Soil associations have also resulted in disproportionate levels of habitat conversion across different sagebrush communities. For example, basin big sage is found at lower elevations, in soils that retain moisture two to four weeks longer than in well drained, but dry and higher elevation soils typical of Wyoming big sagebrush locations. Therefore, sagebrush communities dominated by basin big sagebrush have been converted to agriculture more extensively than have communities on poorer soil sites (Winward 2004).

The effects of disturbance to sagebrush are not constant across the range of the sage-grouse. Connelly *et al.* (2004) presented sage-grouse population data by the described delineations of sagebrush ecosystems and communities (Miller and Eddleman 2000, from Kuchler's 1985 map; and West 1983). Unfortunately, information on impacts to the habitats has not been collected in a compatible manner, making analyses of these impacts specifically within each distinct ecosystem and community impossible. Therefore, while we acknowledge habitat differences across the greater sage-grouse range, we were unable to conduct our review at that level.

Discussion of Listing Factors

Section 4 of the Act (16 U.S.C. 1531) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal endangered and threatened species list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the greater sage-grouse are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Conversion

Sagebrush is estimated to have covered roughly 120 million ha (296 million ac; Schroeder *et al.* 2004) in western North America, but millions of those hectares have been cultivated for the production of potatoes, wheat, and other crops (Schroeder *et al.* 1999, 2000). Western rangelands were converted to agricultural lands on a large scale beginning with the series of Homestead Acts in the 1800s (Braun 1998, Hays *et al.* 1998), especially where suitable deep soil terrain and water were available (Rogers 1964). Connelly *et al.* (2004) estimated that 24.9 million ha (61.5 million ac) within their assessment area for sage-grouse is now comprised of agricultural lands (note, not all of the species' total range is sagebrush habitat, and the assessment area is larger than the sage-grouse current distribution). Influences resulting from agricultural activities adjoining sagebrush habitats extend into those habitats, and include increased predation and reduced nest success due to predators associated with agriculture (Connelly *et al.* 2004). Adding a 6.9 km (4.3 mi) buffer around agricultural areas (for the potential foraging distance of domestic cats and red foxes (*Vulpes vulpes*)), Connelly *et al.* (2004) estimated 115.2 million ha (284.7 million ac) (56 percent) within their assessment area for the greater sage-grouse is influenced by agriculture.

In some States, the loss of sagebrush shrub-steppe habitats through conversion to agricultural crops has been dramatic. This impact has been

especially apparent in the Columbia Basin of the Northwest and the Snake River Plain of Idaho (Schroeder *et al.* 2004). Hironaka *et al.* (1983) estimated that 99 percent of basin big sagebrush (*A. t. tridentata*) habitat in the Snake River Plain has been converted to cropland. Prior to European immigrant settlement in the 19th century, Washington had an estimated 42 million ha (103.8 million ac) of shrub-steppe (Connelly *et al.* 2004). Dobler (1994) estimated that approximately 60 percent of the original shrub-steppe habitat in Washington has been converted to primarily agricultural uses. In eastern Washington, land conversion to dryland farming occurred mostly between 1900 and the 1940s (Hays *et al.* 1998) and then in the 1950s and 1960s large-scale irrigation projects (made possible through the construction of dams) reduced sage-grouse habitat even further (Hofmann 1991 in Hays *et al.* 1998). Deep soils supporting shrub-steppe communities in Washington continue to be converted to agricultural uses (Vander Haegen *et al.* 2000), resulting in habitat loss. In north central Oregon, approximately 2.6 million ha (6.4 million ac) of habitat were converted for agricultural purposes, essentially eliminating sage-grouse from this area (Willis *et al.* 1993). More broadly, across the Interior Columbia Basin of southern Idaho, northern Utah, northern Nevada, eastern Oregon and Washington, approximately 6 million ha (14.8 million ac) of shrub-steppe habitat has been converted to agricultural crops (Altman and Holmes 2000).

Development of irrigation projects to support agricultural production, in some cases conjointly with hydroelectric dam construction, has resulted in additional sage-grouse habitat loss (Braun 1998). The reservoirs formed by these projects impacted native shrub-steppe habitat adjacent to the rivers in addition to supporting the irrigation and direct conversion of shrub-steppe lands to agriculture. The projects precipitated conversion of large expanses of upland shrub-steppe habitat in the Columbia Basin for irrigated agriculture (August 24, 2000; 65 FR 51578). The creation of these reservoirs also inundated hundreds of kilometers of riparian habitats used by sage-grouse broods (Braun 1998). However, other small and isolated reclamation projects (4,000 to 8,000 ha [10,000 to 20,000 ac]) were responsible for three-fold localized increases in sage-grouse populations (Patterson 1952) by providing water in a semi-arid environment which provided additional insect and forb food resources (*e.g.*, Eden Reclamation Project in Wyoming). Shrub-steppe habitat continues to be converted for both dryland and irrigated crop production, albeit at much-reduced levels (65 FR 51578; Braun 1998).

Although conversion of shrub-steppe habitat to agricultural crops impacts sage-grouse through the loss of sagebrush on a broad scale, some studies report the use of agricultural crops (*e.g.*, alfalfa) by sage-grouse. When alfalfa fields and other croplands are adjacent to extant sagebrush habitat, sage-grouse have been observed feeding in these fields, especially during brood-rearing (Patterson 1952, Rogers 1964, Wallestad 1971, Connelly *et al.* 1988, Fischer *et al.* 1997). Connelly *et al.* (1988) reported seasonal movements of sage-grouse to agricultural crops as sagebrush habitats desiccated during the summer.

Sagebrush removal to increase herbaceous forage and grasses for domestic and wild ungulates is a common practice in sagebrush ecosystems (Connelly *et al.* 2004). By the 1970s, over 2 million ha (5 million ac) of sagebrush had been mechanically treated, sprayed with herbicide, or burned (Crawford *et al.* 2004). Braun (1998) concluded that since European settlement of western North America, all sagebrush habitats used by greater sage-grouse have been treated in some way to reduce shrub cover. The use of chemicals to control sagebrush was initiated in the 1940s and intensified in the 1960s and early 1970s (Braun 1987).

The extent to which mechanical and chemical removal or control of sagebrush currently occurs is not known, particularly with regard to private lands. However, the BLM has stated that with rare exceptions, they no longer are involved in actions that convert sagebrush to other habitat types, and that mechanical or chemical treatments in sagebrush habitat on BLM lands currently focus on improving the diversity of the native plant community, reducing conifer encroachment, or reducing the risk of a large wildfire (BLM 2004a).

Greater sage-grouse response to herbicide treatments depends on the extent to which forbs and sagebrush are killed. Chemical control of sagebrush has resulted in declines of sage-grouse breeding populations through the loss of live sagebrush cover (Connelly *et al.* 2000a). Herbicide treatment also can result in sage-grouse emigration from affected areas (Connelly *et al.* 2000a), and has been documented to have a negative effect on nesting, brood carrying capacity (Klebenow 1970), and winter shrub cover essential for food and thermal cover (Pyrah 1972 and Higby 1969 as cited in Connelly *et al.* 2000a). Conversely, small treatments interspersed with non-treated sagebrush habitats did not affect sage-grouse use, presumably due to minimal effects on food or cover (Braun 1998). Also application of herbicides in early spring to reduce sagebrush cover may enhance some brood-rearing habitats by increasing the coverage of herbaceous plant foods (Autenrieth 1981).

Mechanical treatments are designed to either remove the aboveground portion of the sagebrush plant (mowing, roller chopping, and rotobeating), or to uproot the plant from the soil (grubbing, bulldozing, anchor chaining, cabling, railing, raking, and plowing; Connelly *et al.* 2004). These treatments were begun in the 1930s and continued at relatively low levels to the late 1990s (Braun 1998). Mechanical treatments, if carefully designed and executed, can be beneficial to sage-grouse by improving herbaceous cover, forb production, and resprouting of sagebrush (Braun 1998). However, adverse effects also have been documented (Connelly *et al.* 2000a). For example, in Montana, the number of breeding males declined by 73 percent after 16 percent of the 202 km^2 (78 mi^2) study area was plowed (Swenson *et al.* 1987). Mechanical treatments in blocks greater than 100 ha (247 ac), or of any size seeded with exotic grasses, degrade sage-grouse habitat by altering the structure and composition of the vegetative community (Braun 1998).

While many square miles of sagebrush habitat has been lost during the past 150 years to conversion of sagebrush habitat to agriculture, this conversion occurs at such relatively low levels today, that we do not consider it a threat to the greater sage-grouse on a rangewide basis.

Habitat Fragmentation

This section considers the various natural and anthropogenic forces that influence sage-grouse habitat and can result in habitat fragmentation. Habitat fragmentation is the separation or splitting apart of previously contiguous, functional habitat components of a species. Fragmentation can result from direct habitat losses that leave the remaining habitat in non-contiguous patches, or from alteration of habitat areas that render the altered patches unusable to a species (*i.e.*, functional habitat loss). Functional habitat losses include disturbances that change a habitat's successional state or remove one or more habitat functions, physical barriers that preclude use of otherwise suitable areas, and activities that prevent animals from using suitable habitats patches due to behavioral avoidance.

Sagebrush communities exhibit a high degree of variation in their resistance and resilience to change, beyond natural variation. Resistance (the ability to withstand disturbing forces without changing) and resilience (the ability to recover once altered) generally increase with increasing moisture and decreasing temperatures, and can also be linked to soil characteristics (Connelly *et al.* 2004). However, most extant sagebrush habitat has been altered since European immigrant settlement of the West (Baker *et al.* 1976; Braun 1998; Knick *et al.* 2003; Connelly *et al.* 2004), and sagebrush habitat continues to be fragmented and lost (Knick *et al.* 2003) through the factors described below. The cumulative effects of habitat fragmentation have not been quantified over the range of sagebrush and most fragmentation cannot be attributed to specific land uses (Knick *et al.* 2003).

Fragmentation of sagebrush habitats has been cited as a primary cause of the decline of sage-grouse populations since the species requires large expanses of contiguous sagebrush (Patterson 1952; Connelly and Braun 1997; Braun 1998; Johnson and Braun 1999; Connelly *et al.* 2000a; Miller and Eddleman 2000; Schroeder and Baydack 2001; Johnsgard 2002; Aldridge and Brigham 2003; Beck *et al.* 2003; Pedersen *et al.* 2003; Connelly *et al.* 2004; Schroeder *et al.* 2004). However, there is a lack of data to assess how fragmentation influences specific greater sage-grouse life history parameters such as productivity, density, and home range. While sage-grouse are dependent on interconnected expanses of sagebrush (Patterson 1952; Connelly *et al.* 2004), data are not available regarding minimum sagebrush patch sizes to support populations of sage-grouse. Estimating the impact of habitat fragmentation on sage-grouse is complicated by time lags in response to habitat changes, particularly since these long-lived birds will continue to return to altered breeding areas (leks, nesting areas, and early brood-rearing areas) due to strong site fidelity despite nesting or productivity failures (Wiens and Rotenberry 1985).

Powerlines

Power grids were first constructed in the United States in the late 1800s. The public demand for electricity has grown as human population and industrial activities have expanded (Manville 2002), resulting in more than 804,500 km (500,000 mi) of transmission lines (lines carrying ≥ 115,000 volts/115kV) by 2002 within the United States (Manville 2002). A similar estimate is not available for distribution lines (lines carrying ≤ 69,000 volts/69kV), and we are not aware of data for Canada. Within their analysis area (*i.e.*, the pre-European settlement distribution of greater sage-grouse, including Canada, plus a 50-km (31.3-mi) buffer (buffer is to allow for external factors that may have contributed to current trends in populations or habitats)), Connelly *et al.* (2004) state there is a minimum of 15,296 km^2 (5,904 mi^2) of land (less than 1 percent of their assessment area) in transmission powerline corridors, but could provide no estimate of the density of distribution lines in their assessment area.

Powerlines can directly affect greater sage-grouse by posing a collision and electrocution hazard (Braun 1998; Connelly *et al.* 2000a), and can have indirect effects by increasing predation (Connelly *et al.* 2004), fragmenting habitat (Braun 1998), and facilitating the invasion of exotic annual plants (Knick *et al.* 2003; Connelly *et al.* 2004). In 1939, Borell reported the deaths of 3 adult sage-grouse as a result of colliding with a telegraph line in Utah (Borell 1939). Both Braun (1998) and Connelly *et al.* (2000a) report that sage-grouse collisions with powerlines occur, although no specific instances were presented. Other than an unpublished observation reported by Aldridge and Brigham (2003), we were unable to find documentations of other collisions and/or electrocutions of sage-grouse resulting from powerlines.

In areas where the vegetation is low and the terrain relatively flat, power poles provide an attractive hunting and roosting perch, as well as nesting stratum for many species of raptors (Steenhof *et al.* 1993; Connelly *et al.* 2000a; Manville 2002; Vander Haegen *et al.* 2002). Power poles increase a raptor's range of vision, allow for greater speed during attacks on prey, and serve as territorial markers (Steenhof *et al.* 1993; Manville 2002). Raptors may actively seek out power poles where natural perches are limited. For example, within one year of construction of a 596-km (372.5-mi) transmission line in southern Idaho and Oregon, raptors and common ravens (*Corvus corax*) began nesting on the supporting poles (Steenhof *et al.* 1993). Within 10 years of construction, 133 pairs of raptors and ravens were nesting along this stretch (Steenhof *et al.* 1993). The increased abundance of raptors and corvids within occupied sage-grouse habitats can result in increased predation. Ellis (1985) reported that golden eagle predation on sage-grouse on leks increased from 26 to 73 percent of the total predation after completion of a transmission line within 200 m (220 yd) of an active sage-grouse lek in northeastern Utah. The lek was eventually abandoned, and Ellis (1985) concluded that the presence of the powerline resulted in changes in sage-grouse dispersal patterns and fragmentation of the habitat. Leks within 0.4 km (0.25 mi) of new powerlines constructed for coalbed methane development in the Powder River Basin of Wyoming had significantly lower growth rates, as measured by recruitment of new males onto the lek, compared to leks further from these lines, which was presumed to be the result of increased raptor predation (Braun *et al.* 2002). Within their analysis area, Connelly *et al.* (2004) estimated that the area potentially influenced by additional perches for corvids and raptors provided by powerlines, assuming a 5 to 6.9-km (3.1 to 4.3-mi) radius buffer around the perches based on the average foraging distance of these predators, was 672,644 to 837,390 km^2 (259,641 to 323,317 mi^2), or 32 to 40 percent of their assessment area. The actual impact on the area would depend on corvid and raptor densities within the area. The presence of a powerline may fragment sage-grouse habitats even if raptors are not present. Braun (1998; unpublished data) found that use of otherwise suitable habitat by sage-grouse near powerlines increased as distance from the powerline increased for up to 600 m (660 yd) and based on that unpublished data reported that the presence of powerlines may limit sage-grouse use within 1 km (0.6 mi) in otherwise suitable habitat.

Linear corridors through sagebrush habitats can facilitate the spread of invasive species, such as cheatgrass (*Bromus tectorum*) (Gelbard and Belnap 2003; Knick *et al.* 2003; Connelly *et al.* 2004). However, we were unable to find any information regarding the amount of invasive species incursion as a result of powerline construction.

Powerlines are common to nearly every type of anthropogenic habitat use, except perhaps some forms of agricultural development (*e.g.*, livestock grazing) and fire. Although we were unable to find an estimate of all future proposed powerlines within currently occupied sage-grouse habitats, we anticipate that powerlines will increase, particularly given the increasing development of energy resources and urban areas. For example, up to 8,579 km (5,311 mi) of new powerlines are predicted for the development of the Powder River Basin coal-bed methane field in northeastern Wyoming (BLM 2003a) in addition to the approximately 9,656 km (6,000 mi) already constructed in that area. Although raptors associated

with powerlines may negatively impact individual greater sage-grouse and habitats, we could find no information regarding the effect of this impact on a rangewide basis.

Communication Towers

Within sage-grouse habitats, 9,510 new communication towers have been constructed within recent years (Connelly *et al.* 2004). While millions of birds are killed annually in the United States through collisions with communication towers and their associated structures (guy wires, lights, etc.; Manville 2002), most documented mortalities are of migratory songbirds. We were unable to determine if any sage-grouse mortalities occur as a result of collision with communication towers or their supporting structures, as most towers are not monitored and those that are lie outside the range of the species (Shire *et al.* 2000; Kerlinger 2000). However, communication towers also provide perches for corvids and raptors (Steenhof *et al.* 1993; Connelly *et al.* 2004). We could find no information regarding the potential impacts of communication towers to the greater sage-grouse on a rangewide basis.

Fences

Fences are used to delineate property boundaries and for livestock management (Braun 1998; Connelly *et al.* 2000a). The effects of fencing on sage-grouse include direct mortality through collisions, creation of predator (raptor) perch sites, the potential creation of a predator corridor along fences (particularly if a road is maintained next to the fence), incursion of exotic species along the fencing corridor, and habitat fragmentation (Call and Maser 1985; Braun 1998; Connelly *et al.* 2000a; Beck *et al.* 2003; Knick *et al.* 2003; Connelly *et al.* 2004).

Sage-grouse frequently fly low and fast across sagebrush flats and new fences can create a collision hazard (Call and Maser 1985). Thirty-six carcasses of sage-grouse were found near Randolph, Utah, along a 3.2 km (2 mi) fence within three months of its construction (Call and Maser 1985). Twenty-one incidents of mortality through fence collisions near Pinedale, Wyoming, were reported in 2003 to the BLM (Connelly *et al.* 2004). Fence collisions continue to be identified as a source of mortality (Braun 1998; Connelly *et al.* 2000a; Oyler-McCance *et al.* 2001; Connelly *et al.* 2004), although effects on populations are not understood. Fence posts also create perching places for raptors and corvids, which may increase their ability to prey on sage-grouse (Braun 1998; Connelly *et al.* 2000b; Oyler-McCance *et al.* 2001; Connelly *et al.* 2004). We anticipate that the effect on sage-grouse populations through the creation of new raptor perches and predator corridors into sagebrush habitats are similar to that of powerlines discussed previously (Braun 1998; Connelly *et al.* 2004). Fences and their associated roads also facilitate the spread of invasive plant species that replace sagebrush plants upon which sage-grouse depend (Braun 1998; Connelly *et al.* 2000a; Gelbard and Belnap 2003; Connelly *et al.* 2004). Greater sage-grouse avoidance of habitat adjacent to fences, presumably to minimize the risk of predation, effectively results in habitat fragmentation even if the actual habitat is not removed (Braun 1998). More than 1,000 km (625 mi) of fences were constructed annually in sagebrush habitats from 1996 through 2002, mostly in Montana, Nevada, Oregon and Wyoming (Connelly *et al.* 2004). Over 51,000 km (31,690 mi) of fences were constructed on BLM lands supporting sage-grouse populations between 1962 and 1997 (Connelly *et al.* 2000a). However, some of the new 1–3 wire fencing being erected across the range may pose less of a collision risk to sage grouse than woven fences.

Roads and Railroads

Impacts from roads may include direct habitat loss, direct mortality, create barriers to migration corridors or seasonal habitats, facilitation of predators and spread of invasive vegetative species, and other indirect influences such as noise (Forman and Alexander 1998). Interstates and major paved roads cover approximately 14,272 km^2 (22,835 mi^2), less then 1 percent of their assessment area (Connelly *et al.* 2004). Secondary paved road densities within this area range to greater than 2 km/km^2 (3.24 mi/mi^2). Sage-grouse mortality resulting from collisions with vehicles does occur (Patterson 1952), but mortalities are typically not monitored or recorded. Therefore, we are unable to determine the importance of this factor on sage-grouse populations. Data regarding how roads affect seasonal habitat availability for individual sage-grouse populations by creating barriers and the ability of sage-grouse to reach these areas were not available. Road development within Gunnison sage-grouse habitats precluded movement of local populations between the resultant patches, presumably to minimize their exposure to predation (Oyler-McCance *et al.* 2001).

Roads can provide corridors for predators to move into previously unoccupied areas. For some mammalian species, dispersal along roads has greatly increased their distribution (Forman and Alexander 1998; Forman 2000). Corvids also use linear features such as primary and secondary roads as travel routes, expanding their movements into previously unused regions (Connelly *et al.* 2000b; Aldridge and Brigham 2003; Connelly *et al.* 2004). In an analysis of anthropogenic impacts, Connelly *et al.* (2004) reported that at least 58 percent of their analysis area has a high or medium presence of corvids, known sage-grouse nest and chick predators (Schroeder and Baydack 2001). We have no information on the extent to which corvids prey on sage-grouse chicks and eggs. Additionally, highway rest areas provide a source of food and perches for corvids and raptors, and facilitate their movements into surrounding areas (Connelly *et al.* 2004). It has not been documented that sage-grouse populations are affected by predators using roads as corridors into sagebrush habitats.

The presence of roads also increases human access and their resulting disturbance effects in remote areas (Forman and Alexander 1998; Forman 2000; Connelly *et al.* 2004). Increases in legal and illegal hunting activities resulting from the use of roads built into sagebrush habitats have been documented (Patterson 1952; Connelly *et al.* 2004). However, the actual current effect of these increased activities on sage-grouse populations has not been determined. Roads may also facilitate access for habitat treatments (Connelly *et al.* 2004), resulting in subsequent direct habitat losses. New roads are being constructed to support development activities within the greater sage-grouse extant range. For example, in the Powder River Basin of Wyoming, up to 28,572 km (17,754 mi) of roads to support coalbed methane development are proposed (BLM 2003a).

The expansion of road networks has been documented to contribute to exotic plant invasions via introduced roadfill, vehicle transport, and road maintenance activities (Forman and Alexander 1998; Forman 2000; Gelbard and Belnap 2003; Knick *et al.* 2003; Connelly *et al.* 2004). Invasive species are not limited to roadsides (or verges), but have also encroached into the surrounding habitats (Forman and Alexander 1998; Forman 2000; Gelbard and Belnap 2003). In their study of roads on the Colorado Plateau of southern Utah, Gelbard and Belnap (2003) found that improving unpaved four-wheel drive roads to paved roads resulted in increased cover of exotic plant species within the interior of adjacent vegetative

communities. This effect was associated with road construction and maintenance activities and vehicle traffic, and not with differences in site characteristics. The incursion of exotic plants into native sagebrush systems can negatively affect greater sage-grouse through habitat losses and conversions (see further discussion below).

Additional indirect effects of roads may result from birds' behavioral avoidance of road areas because of noise, visual disturbance, pollutants, and predators moving along a road. The absence of screening vegetation in arid and semiarid regions further exacerbates the problem (Suter 1978). Male sage-grouse depend on acoustical signals to attract females to leks (Gibson and Bradbury 1985; Gratson 1993). If noise interferes with mating displays, and thereby female attendance, younger males will not be drawn to the lek and eventually leks will become inactive (Amstrup and Phillips 1977; Braun 1986). Dust from roads and exposed roadsides can damage vegetation through interference with photosynthetic activities; the actual amount of potential damage depends on winds, wind direction, the type of surrounding vegetation and topography (Forman and Alexander 1998). Chemicals used for road maintenance, particularly in areas with snowy or icy precipitation, can affect the composition of roadside vegetation (Forman and Alexander 1998). We were unable to find any data relating these potential effects to impacts on sage-grouse population parameters.

In a study on the Pinedale Anticline in Wyoming, sage-grouse hens that bred on leks within 3 km (1.9 mi) of roads associated with oil and gas development traveled twice as far to nest as did hens bred on leks greater than 3 km (1.9 mi) from roads. Nest initiation rates for hens bred on leks ''close'' to roads were also lower (50 vs 65 percent) affecting population recruitment (33 vs. 44 percent) (Lyon 2000; Lyon and Anderson 2003). Lyon and Anderson (2003) suggested that roads may be the primary impact of oil and gas development to sage-grouse, due to their persistence and continued use even after drilling and production have ceased. Braun *et al.* (2002) suggested that daily vehicular traffic along road networks for oil wells can impact sage-grouse breeding activities based on lek abandonment patterns. In a study of 804 leks within 100 km (62.5 mi) of Interstate 80 in southern Wyoming and northeastern Utah, Connelly *et al.* (2004) found that there were no leks within 2 km (1.25 mi) of the interstate and only 9 leks were found between 2 and 4 km (1.25 and 2.5 mi) along this same highway. The number of active leks increased with increasing distance from the interstate. Lek persistence and activity relative to distance from the interstate were also measured. The distance of a lek from the interstate was a significant predictor of lek activity, with leks further from the interstate more likely to be active. An analysis of long-term changes in populations between 1970 and 2003 showed that leks closest to the interstate declined at a greater rate than those further away (Connelly *et al.* 2004). What is not clear from these studies is what specific factor relative to roads (*e.g.*, noise, changes in vegetation, etc.) sage-grouse are responding to, and Connelly *et al.* (2004) caution that they have not included other potential sources of indirect disturbance (*e.g.*, powerlines) in their analyses.

Railroads presumably have the same potential impacts to sage-grouse as do roads since they create linear corridors within sagebrush habitats. Railways were primarily responsible for the initial spread of cheatgrass in the intermountain region (Connelly *et al.* 2004). Cheatgrass, an exotic species that is unsuitable as sage-grouse habitat, readily invaded the disturbed soils adjacent to railroads, being distributed by trains and the cattle they transported. Fires created by trains facilitated the spread of cheatgrass into adjacent areas. Railroads cover 137 km^2 (53 mi^2) of the sage-grouse in Connelly *et al.*'s (2004) assessment area, but are estimated to influence an area of 183,915 km^2 (71,000 mi^2), assuming a 3 km (1.9 mi) zone of influence (9 percent of their assessment area). Avian collisions with trains occur, although no estimates of mortality rates are documented in the literature (Erickson *et al.* 2001).

The effects of infrastructure, particularly as related to energy development and urbanization, were identified by some members of the expert panel as an important factor contributing to the extinction risk for greater sage-grouse, particularly in the eastern part of the species range (Montana, Wyoming and Colorado). Across the entire range of the greater sage-grouse, infrastructure ranked second as an extinction risk factor by the expert panel.

Grazing

Bison, antelope and other ungulates grazed lands occupied by sage-grouse prior to European immigrant settlement of the western United States in the mid to late 1800s. With settlement, from 1870 to the early 1900s, the numbers of cattle, sheep, and horses rapidly increased, peaking at the turn of the century (Oliphant 1968, Young *et al.* 1976) with an estimated 26 million cattle and 20 million sheep in the West (Wilkenson 1992). Livestock grazing is the most widespread type of land use across the sagebrush biome (Connelly *et al.* 2004); almost all sagebrush areas are managed for livestock grazing (Knick *et al.* 2003). Cattle and sheep animal unit months (AUMs; the amount of forage required to feed one cow with calf, one horse, five sheep, or five goats for one month) on all Federal land have declined since the early 1900s (Laycock *et al.* 1996). By the 1940s AUMs on all Federal lands were estimated to be 14.6 million, increasing to 16.5 million in the 1950s, and gradually declining to 10.2 million by the 1990s (Miller and Eddleman 2000). As of 2003, active AUMs for BLM lands in States where sage-grouse occur totaled about 10.1 million (BLM 2003b). Most of the 78.3 million acres of BLM-administered land within the current range of the greater sage-grouse are open to livestock grazing (BLM 2004a). Knick *et al.* (2003) state that excessive grazing by domestic livestock during the late 1800s and early 1900s, along with severe drought, significantly impacted sagebrush ecosystems. Long-term effects from this overgrazing, including changes in plant communities and soils persist today.

Few studies have directly addressed the effect of livestock grazing on sage-grouse (Beck and Mitchell 2000, Wamboldt *et al.* 2002, Crawford *et al.* 2004), and there is little direct experimental evidence linking grazing practices to sage-grouse population levels (Braun 1987, Connelly and Braun 1997). Native herbivores, such as pronghorn antelope (*Antilocarpo americana*), were present in the sagebrush steppe region prior to European settlement of western States (Miller *et al.* 1994), and sage-grouse co-evolved with these animals. However, many areas of sagebrush-steppe did not support herds of large ungulates, as large native herbivores disappeared 12,000 years before present (Knick *et al.* 2003). Therefore, native vegetation communities within the sagebrush ecosystem developed in the absence of significant grazing presence (Knick *et al.* 2003).

It has been demonstrated that the reduction of grass heights due to livestock grazing of sage-grouse nesting and brood-rearing areas negatively affects nesting success by reducing cover necessary for predator avoidance (Gregg *et al.* 1994; Delong *et al.* 1995; Connelly *et al.* 2000a). In addition, livestock consumption of forbs may reduce food availability for sage-grouse.

This is particularly important for pre-laying hens, as forbs provide essential calcium, phosphorus, and protein. A hen's nutritional condition affects nest initiation rate, clutch size, and subsequent reproductive success (Connelly *et al.* 2000a). This information indicates that grazing by livestock could reduce the suitability of breeding and brood-rearing habitat, subsequently negatively affecting sage-grouse populations (Braun 1987, Dobkin 1995, Beck and Mitchell 2000). Exclosure studies have demonstrated that domestic livestock grazing also reduces water infiltration rates and cover of herbaceous plants and litter, as well as compacting soils and increasing soil erosion (Braun 1998). This results in a change in the proportion of shrub, grass, and forb components in the affected area, and an increased invasion of exotic plant species that do not provide suitable habitat for sage-grouse (Miller and Eddleman 2000). Hulet (1983, as cited in Connelly *et al.* 2000a) found that heavy grazing could lead to increases in ground squirrels that depredate sage-grouse nests. Thus, important factors of livestock operations related to impacts on sage-grouse include stocking levels, season of use, and utilization levels.

Other consequences of grazing include several related to livestock trampling. Outright nest destruction by livestock trampling does occur and the presence of livestock can cause sage-grouse to abandon their nests (Rasmussen and Griner 1938, Patterson 1952, Call and Maser 1985, Crawford *et al.* 2004). Call and Maser (1985) indicate that forced movements of cattle and sheep could have significant effects on nesting hens and young broods caught in the path of these drives. Livestock may also trample sagebrush seedlings thereby removing a source of future sage-grouse food and cover (Connelly *et al.* 2000a), and trampling of soil by livestock can reduce or eliminate biological soil crusts making these areas susceptible to cheatgrass invasion (Mack 1981 as cited in Miller and Eddleman 2000; Young and Allen 1997; Forman and Alexander 1998).

Livestock grazing may also compete directly with sage-grouse for rangeland resources. Cattle are grazers, feeding mostly on grasses, but they will make seasonal use of forbs and browse species like sagebrush (Vallentine 2001). Domestic sheep are intermediate feeders making high use of forbs, but also use a large volume of grass and browse species like sagebrush (Vallentine 2001). Pedersen *et al.* (2003) documented sheep consumption of rangeland forbs in areas where sage-grouse occur. The effects of direct competition between livestock and sage-grouse depend on condition of the habitat and grazing practices, and thus vary across the range of the species. For example, Aldridge and Brigham (2003) suggest that poor livestock management in mesic sites, which are considered limited habitats for sage-grouse in Alberta, results in a reduction of forbs and grasses available to sage-grouse chicks, thereby affecting chick survival.

Some effects of livestock grazing may have positive consequences for sage-grouse. Evans (1986) found that sage-grouse used grazed meadows significantly more during late summer than ungrazed meadows because grazing had stimulated the regrowth of forbs. Klebenow (1981) noted that sage-grouse sought out and used openings in meadows created by cattle grazing in northern Nevada. Finally both sheep and goats have been used to control invasive weeds (Mosely 1996 as cited in Connelly *et al.* 2004; Olson and Wallander 2001; Merritt *et al.* 2001) and woody plant encroachment (Riggs and Urness 1989) in sage-grouse habitat.

Although there are few studies which directly examine the effects of livestock grazing on greater sage-grouse, and no studies on a rangewide scale, the expert panel ranked grazing as a potential extinction risk factor. This ranking incorporates not only the direct effects of grazing, but all associated activities, such as vegetation management, fencing, overuse of riparian habitats by domestic livestock, etc. The expert panel also noted that the recovery of greater sage-grouse populations from the 1930s to the 1950s occurred during a period of a reduction in livestock grazing as well as a change in weather resulting in wetter conditions. However, the panel also noted that proper grazing management may be a beneficial tool for enhancing greater sage-grouse habitats where maintenance and enhancement of these habitats is identified as an objective, although this has not been rigorously tested.

Free-roaming horses and burros have been a component of sagebrush and other arid communities since they were brought to North America at the end of the 16th century (Wagner 1983; Beever 2003). About 31,000 wild horses occur in 10 western States, with herd sizes being largest in States with the most extensive sagebrush cover (Nevada, Wyoming, and Oregon; Connelly *et al.* 2004). Burros occur in five western States, with about 5,000 of these present (Connelly *et al.* 2004). Due to physiological differences, a horse consumes 20 to 65 percent more forage than would a cow of equivalent body mass (Wagner 1983; Menard *et al.* 2002). We are unaware of any studies that directly address the impact of wild horses or burros on sagebrush and sage-grouse. However some authors have suggested that wild horses could negatively impact important meadow and spring brood-rearing habitats used by sage-grouse (Crawford *et al.* 2004; Connelly *et al.* 2004). Other impacts from wild horse grazing may be similar to the impacts resulting from domestic livestock in sagebrush habitats, but these have not been documented.

Sagebrush removal to increase herbaceous forage and grasses for domestic and wild ungulates is a common practice in sagebrush ecosystems (Connelly *et al.* 2004). Removal from chemical and mechanical means has been discussed previously. The elimination of sagebrush is usually followed with rangeland seedings to improve forage for livestock grazing operations (Knick *et al.* 2003; Connelly *et al.* 2004). Large expanses of sagebrush have been removed and reseeded with non-native grasses, such as crested wheatgrass (*Agropyron cristatum*), to increase forage production on public lands (Shane *et al.* 1983, cited in Knick *et al.* 2003; Connelly *et al.* 2004). These treatments had the effect of reducing or eliminating many native grasses and forbs present prior to the seedings. Sage-grouse are affected indirectly through the loss of native forbs that serve as food and the loss of native grasses that provide concealment or hiding cover within the understories of the former sagebrush stands (Connelly *et al.* 2004). BLM reports that they no longer implement actions that result in removing large expanses of sagebrush and reseeding with non-native grasses (BLM 2004a).

Water developments for the benefit of livestock on public lands are common (Connelly *et al.* 2004). Development of springs and other water sources to support livestock in upland shrub-steppe habitats can artificially concentrate domestic and wild ungulates in important sage-grouse habitats, thereby exacerbating grazing impacts in those areas through vegetation trampling, etc. (Braun 1998). Diverting the water sources has the secondary effect of changing the habitat present at the water source before diversion. This could result in the loss of either riparian or wet meadow habitat important to sage-grouse as sources of forbs or insects.

Mining

Development of mines within the distribution of the sage-grouse began before 1900 (Robbins and Ward 1994,

cited in Braun 1998). Surface mining for any mineral resource (coal, uranium, copper, bentonite, gypsum, oil shale, phosphate, limestone, gravel, etc.) will result in direct habitat loss for sage-grouse if the mining occurs in occupied sagebrush habitats. Direct loss of sage-grouse habitat can also occur if the overburden and/or topsoil resulting from mining activities are stored in sagebrush habitats. The actual effect of this loss depends on the quality, amount, and type of habitat disturbed, the scale of the disturbance, and if non-breeding habitat is affected, the availability of adjacent habitats (Proctor *et al.* 1983; Remington and Braun 1991). Sage-grouse habitat losses from all sources of mining have occurred in Utah (Beck *et al.* 2003), Colorado (Braun 1986), and Wyoming (Hayden-Wing Associates 1983), but the actual amount of habitat loss has not been tabulated. Sagebrush habitat has also been lost to mining in other states within the range of sage-grouse although reliable estimates of the amount of loss are not available.

Mined land reclamation is required by either the Federal or State governments in the greater sage-grouse states and Canada (Smyth and Dearden 1998). Due to the relatively recent nature of federal coal and Canadian regulation (27 and 41 years, respectively; Smyth and Dearden 1998) there is limited long-term monitoring data. The laws generally allow for a change in post-mining land use from pre-mining conditions, and restoration of pre-mining sagebrush habitat may not occur if the surface owner determines an alternative habitat type is preferable. However, Federal coal reclamation requires restoration of diversity and density standards if the private landowner agrees. Early efforts to restore sage-grouse habitats on mined lands focused on creating artificial leks, which was largely unsuccessful (Tate *et al.* 1979; Proctor *et al.* 1983). Most efforts now rely on seasonal restrictions for lek destruction and restoration of sagebrush habitats (Proctor *et al.* 1983; Parrish and Anderson 1994). Regulation of non-coal mining in the United States is at the discretion of the individual States, and may or may not include wildlife habitat restoration as a criterion (Pat Deibert, U.S. Fish and Wildlife Service, pers. comm. 2004).

New vegetation types including exotic species may become established on mined areas (Moore and Mills 1977), altering their suitability for sage-grouse. Temporary habitat loss can stem from intentional planting to minimize erosion or for nurse crops (those crops planted to create suitable microhabitat conditions for the desired vegetative species). The length of this temporary conversion depends on the life of the mine, the success of reclamation, and whether or not reclamation is concurrent with mining disturbance. If reclamation plans call for the permanent conversion of the mined area to a different habitat type (*e.g.*, agriculture) the habitat loss becomes permanent. Invasive exotic plants may also establish on the disturbed surfaces. Removal of the overburden and target mineral may result in changes in topography, subsequently resulting in changes in microclimates and microhabitats (Moore and Mills 1977). Significant topographical changes can affect the ability to successfully restore the mined area to pre-existing vegetative conditions (Moore and Mills 1977). Additional habitat losses can occur if supporting infrastructure, such as roads, railroads, utility corridors, etc., become permanent landscape features after mining and reclamation are completed (Moore and Mills 1977).

In Wyoming and Montana an estimated 38,833 ha (96,000 ac) of disturbed Federal and non-Federal surface are associated with existing coal mining operations (Kermit Witherbee, Bureau of Land Management, pers. comm. 2004). Over the next ten years, it has been estimated that approximately 20,243 ha (50,000 ac) will be disturbed for coal mining activities. This is less than 1 percent of the Connelly *et al.* (2004) assessment area. Of that, 14,170 ha (35,000 ac) should be reclaimed within the same time-period, resulting in a net annual disturbance of 607 ha (1,500 ac). The actual impact to sage-grouse may be longer, as it takes 15 to 30 years for sagebrush regeneration to usable conditions (Connelly and Braun 1997). There will likely be additional losses of sagebrush habitat in other states as a result of mining activities (all types) although we are unable to quantify this.

Mining infrastructure, such as roads, railroads, powerlines, etc., may impact sage-grouse, although those effects are not expected to be different than previously described. Presumably, direct habitat loss will not be as large from subsurface mining. However, the amount of supporting infrastructure and indirect effects may be similar as for surface mines (Thomas and Leistritz 1981). Other indirect effects from mining can include reduced air quality from gaseous emissions and fugitive dust, degradation of surface water quality and quantity, changes in vegetation, topography, land-use practices, and disturbance from noise, ground shock and human presence, and mortality from collision with mining equipment (Moore and Mills 1977; Brown and Clayton 2004). Gaseous emissions, created from the operation of heavy equipment, trains, etc., are usually quickly dissipated in the windy, open areas typical of sagebrush. Fugitive dust could affect local vegetative and insect resources through coating important respiratory surfaces. In extreme cases, plant photosynthesis may be restricted (Moore and Mills 1977). This may result in reduced food and cover resources for sage-grouse. Fugitive dust may also affect sage-grouse through direct irritation of mucus membranes and/or exposure to toxic minerals that are otherwise trapped in the soils (Moore and Mills 1977). Most large surface mines are required to control fugitive dust, so these impacts are probably limited.

Water quality can generally be reduced through increased sediment loads, leaching of toxic compounds or elements from exposed ore, waste rock and overburden, introduction of excess nutrients from blasting and fertilizers, or introduction of pathogens from septic systems and waste disposal associated with mining activity (Moore and Mills 1977). Contamination of water supplies through toxic elements can result in either direct mortality to wildlife, or long-term chronic health problems. Pathogens can also have a similar detrimental effect on wildlife. Water supplies may decline either through direct removal of wetlands from mining activity or reduction from use for fugitive dust suppression. Remaining wetlands may subsequently receive increased use from other wildlife or domestic livestock, resulting in habitat degradation. In Nevada, extensive de-watering of ground water results from open pit gold mining (Kevin Kritz, U.S. Fish and Wildlife Service, pers. comm. 2004). The actual impact of these effects on sage-grouse is unknown. Since sage-grouse do not require free water (Schroeder *et al.* 1999), we anticipate that impacts to water quality from mining activities have minimal population-level effects. The possible exception is degradation of riparian areas, which could result in brood habitat loss.

If blasting is necessary for removal of overburden or the target mineral, ground shock may occur. The full effects of ground shock on wildlife are unknown, but given its temporary duration and localized impact area, impacts are considered minimal (Moore and Mills 1977). One possible exception is the repeated use of explosives during lekking or nesting, which could potentially result in nest and/or lek abandonment (Moore and Mills 1977).

We are unaware of any research on the impact of these factors to sage-grouse. Noise from mining activities may limit sage-grouse use of surrounding suitable habitat. In a study of sharp-tailed grouse (*Pedioecetes phasianellus*) leks in northeastern Wyoming, data suggested that noise from an adjacent coal mine adversely affected leks by masking vocalizations, which resulted in reduced female attendance and yearling recruitment (Amstrup and Phillips 1977). In that study, the authors found that mining noise was continuous across days and seasons, and did not dissipate as it traveled across the adjacent landscape. The effects on sage-grouse of noise from mining are unknown, but sage-grouse also depend on acoustical signals to attract females to leks (Gibson and Bradbury 1985; Gratson 1993). If noise does interfere with mating displays, and thereby female attendance, younger males will not attend the lek, and eventually leks will become inactive (Amstrup and Phillips 1977; Braun 1986).

Mining can also impact sage-grouse through the increased presence of human activity, either through avoidance of suitable habitat adjacent to mines or through collisions with vehicles associated with mining operations (Moore and Mills 1977; Brown and Clayton 2004). An increased human population in an area, as a result of mine extraction activities, may result in increased hunting pressure, both legal and poaching (Moore and Mills 1977). Although these effects have not been quantified on sage-grouse populations, the State of Wyoming requires coal operators to educate their employees about wildlife regulations when they are hired. Sage-grouse may also be at increased risk for collision with vehicles simply due to the increased traffic associated with mining activities and transport (Moore and Mills 1977; Brown and Clayton 2004). However, we were unable to find any information regarding increased mortality of sage-grouse near mines as a result of this effect.

We were only able to locate a few studies that specifically examined the effects of coal mining on greater sage-grouse (Tate *et al.* 1979; Hayden-Wing Associates 1983; Braun 1986; Remington and Braun 1991; Brown and Clayton 2004). In a study in North Park, Colorado, overall population numbers of sage-grouse were not reduced, but there was a reduction in the number of males attending leks within 2 km (0.8 miles) of three coal mines, as well as a failure to recruit yearling males to these existing leks (Braun 1986; Remington and Braun 1991). New leks formed further from the mining disturbance (Remington and Braun 1991). Additionally, some leks adjacent to mine areas that had been abandoned at the onset of mining were re-established when mining activities ceased, suggesting disturbance rather than loss of habitat was the limiting factor. There was no decline in hen survival in a population of sage-grouse near large surface coal mines in northeastern Wyoming and nest success was apparently unaffected by the adjacent mining activity (Brown and Clayton 2004). However, the authors concluded that this population could only be sustained by aggressive land management to maintain suitable habitat, as the existing habitat will become fragmented by continued mining.

Braun (1998) concluded that surface coal mining and all associated activities have negative short-term impacts on sage-grouse numbers and habitats near the mines. Sage-grouse will reestablish on mined areas once mining has ceased, but there is no evidence that population levels will reach their previous size. Additionally, the time span for population re-establishment may be 20 to 30 years (Braun 1998). Hayden-Wing Associates (1983) concluded that the loss of one or two leks in a regional area from coal mining was likely not limiting to local populations in their study on the Caballo Rojo Mine in northeastern Wyoming. However, if several leks are affected, local population numbers may decline (Hayden-Wing Associates 1983).

Hard rock mining impacts greater sage-grouse at the local level. The expert panel identified hard rock mining as a threat of relatively low importance compared to other threats. The effect of hard rock mining, when considered independently of other threats to the species, is likely of relatively low importance to the status of the species range-wide.

Non-Renewable and Renewable Energy Development

Non-renewable energy development (petroleum products, coal) has been occurring in sage-grouse habitats since the late 1800s (Connelly *et al.* 2004). Interest in development of oil and gas has been sporadic and typically focused in limited geographical areas (Braun *et al.* 2002). The re-authorization of the Energy Policy and Conservation Act in 2000 dictated re-inventory of Federal oil and gas reserves, which identified extensive reserves in the Greater Green River Basin of Colorado, Utah, and Wyoming, the San Juan Basin of New Mexico and Colorado, and the Montana Thrust Belt and the Powder River Basin of Wyoming and Montana (Connelly *et al.* 2004). All of these basins are located in primarily sagebrush-dominated landscapes (Knick *et al.* 2003; Connelly *et al.* 2004).

The development of oil and gas resources requires surveys for economically recoverable reserves, construction of well pads and access roads, subsequent drilling and extraction, and transport of oil and gas, typically through pipelines. Ancillary facilities can include compressor stations, pumping stations and electrical facilities (Connelly *et al.* 2004). Surveys for recoverable resources occur primarily through seismic activities, using vibroesis buggies (thumpers) or shothole explosives. Well pads vary in size from 0.10 ha (0.25 ac) for coalbed natural gas wells in areas of level topography to greater than 7 ha (17.3 ac) for deep gas wells (Connelly *et al.* (2004). Pads for compressor stations require 5 to 7 ha (12.4 to 17.3 ac; Connelly *et al.* 2004). Well densities and spacing are typically designed to maximize recovery of the resource and are administered by State and Provincial oil and gas agencies and the BLM (on Native American lands) (Connelly *et al.* 2004). Based on their review of project EIS's, Connelly *et al.* (2004) concluded that the economic life of a coalbed methane well averages 12 to 18 years and 20 to 100 years for deep oil and gas wells.

Connelly *et al.* (2004) reviewed oil and gas development environmental impacts statements to determine that approximately 4,000 oil and gas wells have been approved in the Green River Basin of Wyoming, Colorado and Utah, with approval of an additional 9,700 wells pending. In the Powder River Basin of Wyoming and Montana, 15,811 wells have been approved, and an additional 65,635 are being considered (Connelly *et al.* 2004). In the Uinta/Piceance Basin of Utah, 3,500 wells have been drilled and another 2,600 are pending (Connelly *et al.* 2004). Approximately 3,000 more permits will be issued annually for Montana, Colorado, Utah and Wyoming (Connelly *et al.* 2004). Nine million hectares (22.2 million ac) in Montana, Wyoming, Colorado, Utah and New Mexico are available for oil and gas leasing, and approval for 29,000 new oil and gas leases is anticipated by 2005 (BLM 2003c). The BLM has not quantified the portion of these lands that provide sage-grouse habitat. In September, 2004, the Utah BLM office sold 279 oil and gas leases, incorporating approximately 195,000 ha (481,000 ac) on both BLM and Forest Service surfaces (BLM 2004c). Based on a review of National

Environmental Policy Act (NEPA) documents, there are 27,231 existing oil and gas wells in sagebrush habitats, and another 78,938 to 79,647 are proposed.

Potential impacts to sage-grouse and sagebrush habitats from the development of oil and gas resources include direct habitat loss, habitat fragmentation from vegetation removal, roads, powerlines and pipeline corridors, noise, gaseous emissions, changes in water availability and quality, and increased human presence (Suter 1978; Aldridge 1998; Braun 1998; Aldridge and Brigham 2003; Knick *et al.* 2003; Lyon and Anderson 2003; Connelly *et al.* 2004). We found no information regarding the effects of gaseous emissions produced by oil and gas development. Presumably, as with surface mining, these emissions are quickly dispersed in the windy, open conditions of sagebrush habitats (Moore and Mills 1977), minimizing the potential effects on sage-grouse.

Direct habitat losses result from construction of well pads, roads, pipelines, powerlines, and potentially through the crushing of vegetation during seismic surveys. For example, coal-bed methane development in the Powder River Basin of Wyoming is expected to result in the loss of an additional 21,711 ha (53,626 ac) of sagebrush habitat by 2011 (BLM 2003a). This is less than 1 percent of the Connelly *et al.* (2004) assessment area. Current sage-grouse habitat loss in the Basin from coal-bed methane is estimated at 2,024 ha (5,000 ac) (Braun *et al.* 2002).

Connelly *et al.* (2004) estimated that habitat loss from all existing natural gas pipelines in the conservation assessment area was a minimum of 4,740 km^2 (1,852 mi^2, 1.17 million ac, 474,000 ha; less than 1 percent of their assessment area). Proposed pipelines to support future oil and gas developments are not included in this figure. Although reclamation of short-term disturbances is often concurrent with project development, habitats would not be restored to pre-disturbance conditions for an extended period (BLM 2003a). The amount of direct habitat loss within an area will ultimately be determined by well densities and the associated loss from ancillary facilities. Most Federal land management agencies impose stipulations to preclude exploration in suitable habitat during the nesting season.

Reclamation of areas disturbed by oil and gas development can be concurrent with field development. As disturbed areas are reclaimed, sage-grouse may repopulate the area. However, there is no evidence that populations will attain their previous size, and re-population may take 20 to 30 years, as habitat conditions are not immediately restored (Braun 1998). For most developments, return to pre-disturbance population levels is not expected due to a net loss and fragmentation of habitat (Braun *et al.* 2002). After 20 years, sage-grouse have not recovered to pre-development numbers in Alberta, even though well pads in these areas have been reclaimed (Braun *et al.* 2002). In some reclaimed areas, sage-grouse have not returned (Aldridge and Brigham 2003).

Habitat fragmentation impacts to sage-grouse resulting from vegetation removal, roads, powerlines and pipeline corridors are similar to those described previously. Fragmentation resulting from oil and gas development and the associated introduced infrastructure may have more effects on greater sage-grouse than the associated direct habitat losses, which may not be extensive. For example, of the total 904,109 ha (2,234,103 ac) project area in the Powder River Basin, an estimated 23,735 ha (58,625 ac) of habitat will be directly disturbed by well construction (BLM 2003a). However, up to 8,579 km (5,311 mi) of powerlines, 28,572 km (17,754 mi) of roads, and 33,548 km (20,846 mi) of pipelines are also proposed for this project. The presence of these ancillary facilities may preclude sage-grouse from using suitable adjacent habitats (see previous discussion). As previously discussed, roads associated with oil and gas development were suggested to be the primary impact to greater sage-grouse due to their persistence and continued use even after drilling and production has ceased (Lyon and Anderson 2003).

Noise can drive away wildlife, cause physiological stress and interfere with auditory cues and intraspecific communication, as discussed previously. Aldridge and Brigham (2003) reported that, in the absence of stipulations to minimize the effects, mechanical activities at well sites may disrupt sage-grouse breeding and nesting activities. Hens bred on leks within 3 km (1.9 miles) of oil and gas development in the upper Green River Basin of Wyoming selected nest sites with higher total shrub canopy cover and average live sagebrush height than hens nesting away from disturbance (Lyon 2000). The author hypothesized that exposure to road noise associated with oil and gas drilling may have been one cause for the difference in habitat selection. However, noise could not be separated from the potential effects of increased predation resulting from the presence of a new road. Above-ground noise is typically not regulated to mitigate effects to sage-grouse or other wildlife (Connelly *et al.* 2004). Ground shock from seismic activities may affect sage-grouse if it occurs during the lekking or nesting seasons (Moore and Mills 1977). We are unaware of any research on the impact of ground shock to sage-grouse.

Water quality and quantity may be affected in oil and gas development areas. The impacts are similar relative to the contamination of water supplies by toxic elements and pathogens (see previous discussion), with the addition of potential oil contamination in settling and/or condensate ponds. In many large field developments, water produced during the gas dehydration process is stored in tanks, removing this potential threat. Where oil contamination of open water pits has occurred, no sage-grouse mortalities are known (Pedro Ramirez, U.S. Fish and Wildlife Service, pers. comm. 2004). Water may also be depleted from natural sources for drilling or dust suppression purposes. Remaining wetlands may subsequently receive increased use from other wildlife or domestic livestock, resulting in habitat degradation. Since, sage-grouse do not require free water (Schroeder *et al.* 1999) we anticipate that impacts to water quality from mining activities have minimal effects on them. The possible exceptions are a reduction in habitat quality (*e.g.*, trampling of vegetation, changes in water filtration rates), habitat degradation (*e.g.*, poor vegetation growth), which could result in brood habitat loss. However, we have no data to suggest this is a limiting factor to sage-grouse.

Water produced by coal-bed methane drilling may benefit sage-grouse through expansion of existing wetland and riparian areas, and creation of new areas (BLM 2003a). These habitats could provide additional brood rearing and summering habitats for sage-grouse. However, based on the recent discovery of West Nile virus in the Powder River Basin, and the resulting mortalities of sage-grouse (Naugle *et al.* 2004), there is concern that produced water could be a negative impact if it creates suitable breeding reservoirs for the mosquito vector of this disease. There is currently no evidence supporting a link between West Nile virus and coal-bed methane development (Naugle *et al.* 2004). Produced water could also result in direct habitat loss through prolonged flooding of sagebrush areas, or if the discharged water is of poor quality because of high salt or other mineral content, either of which could result in the loss of sagebrush and/or grasses and forbs necessary for foraging broods

(BLM 2003a). We do not have quantitative information on the extent of habitat influenced by produced water, nor the net effects on sage-grouse populations.

Increased human presence resulting from oil and gas development can also impact sage-grouse either through avoidance of suitable habitat, disruption of breeding activities, or increased hunting and poaching pressure (Aldridge and Brigham 2003; Braun *et al.* 2002; BLM 2003a). Sage-grouse may also be at increased risk for collision with vehicles simply due to the increased traffic associated with oil and gas activities (BLM 2003a).

Only a few studies have examined the effects of oil and gas development on sage-grouse. While each of these studies reported sage-grouse population declines, specific causes for the negative impacts were not determined. In Alberta, Canada, the development of well pads and associated roads in the mid-1980s resulted in the abandonment of three lek complexes within 200 m (220 yd) of these features (Braun *et al.* 2002). Those leks have not been active since that time. A fourth lek complex has gone from three to one lek with fewer numbers of sage-grouse on it (Braun *et al.* 2002). The well pads have since been reclaimed, but sage-grouse numbers have not recovered (we do not have information on post-reclamation vegetation). Subsequent to the development of the Manyberries Oil Field in high quality sage-grouse habitat in Alberta, male sage-grouse counts fell to the lowest known level (Braun *et al.* 2002). Two additional leks were directly disturbed, and neither of these leks has been active within the past 10 years (Braun *et al.* 2002). The development of oil reserves in Jackson County, Colorado, was concurrent with decline of sage-grouse numbers in the oil field area (Braun 1998). Sage-grouse populations still occur in at least one long-term oil field development in Colorado where leks are not within line-of-sight of an active well or powerline (Braun *et al.* 2002). Although the number of active leks has declined in this field, sage-grouse have been consistently documented there since 1973.

Of particular relevance to estimating oil and gas development impacts is the fidelity of sage-grouse hens to nesting and summer brood rearing areas demonstrated by Lyon and Anderson (2003). Hens that have successfully nested will return to the same areas to nest every year. If these habitats are affected by oil and gas development, there is a strong potential that previously successful hens will return but not initiate nests (Lyon 2000). Depending on the number of hens affected, local populations could decline.

Over 200 known leks occur within the coal-bed methane development area in Powder River Basin of northeastern Wyoming. Those leks have been affected by direct habitat losses, higher human activity, and powerlines (Braun *et al.* 2002). Since initiation of field development, 28 percent of known sage-grouse habitat within the project area has been affected. On 30 leks within 0.4 km (0.25 mi) of a well, significantly fewer males have been recorded when compared with other, undisturbed leks. The rate of recruitment to the male breeding population on these leks is also lower when compared with increases on less disturbed leks (Braun *et al.* 2002; BLM 2003a). Powerlines have been constructed within 0.4 km (0.25 mi) of 40 leks within the project area. These leks also have lower recruitment rates, possibly due to increased raptor predation. Lower numbers of grouse have also been counted on leks within 1.6 km (1 mi) of compressor stations (Braun *et al.* 2002). In the Final EIS for this project, the BLM stated that local sage-grouse extirpations may occur as a result of the synergistic effects of all aspects of coal-bed methane development in this area (BLM 2003a).

In the Jonah natural gas field in southwestern Wyoming, 10 of 24 leks in or near the project area are no longer active, although data collection has not been consistent on 4 of those leks (BLM 2004d). Two leks were destroyed by the placement of well pads on the leks, and re-establishment of those leks at that location is not anticipated (BLM 2004d). Based on nest initiation and habitat fidelity results, Lyon and Anderson (2003) concluded that impacts occur greater than 0.4 km (0.25 mi) from well pads, thus current no-surface-occupancy buffers around active sage-grouse based on that distance may not be adequate to avoid adverse effects. However, to our knowledge no information exists concerning whether leks are subsequently re-established.

Protective wildlife stipulations are typically placed on individual oil and gas leases at the time of sale, including seasonal and temporal restrictions around important sage-grouse habitats (Connelly *et al.* 2004). The protection afforded by these stipulations depends on the specific prescriptions, and whether or not important sage-grouse habitats are identified in the area proposed for development. Additional stipulations may be placed on oil and gas development, as identified in BLM land use plans, and through the NEPA process. Most lease stipulations have exception, waiver, and/or modification criteria that are included in BLM land use plans. Waivers, which are a permanent exemption, and modifications, which are changes to the terms of a stipulation, are described by BLM as being rare, and they also may require public notice (BLM 2004a). Exceptions are a one-time exemption to a lease stipulation. An example cited by BLM is a timing stipulation designed to avoid activity in wintering habitat, which could be the subject of an exception in a mild winter if a company requests an early entry to drill and BLM or the local wildlife agency make an on-the-ground survey and find sage-grouse are not using the winter habitat or have left the area earlier than normal (BLM 2004a).

On June 22, 2004, BLM issued an Instruction Memorandum (IM) establishing policy that BLM field offices consider Best Management Practices (BMPs) for oil and gas and other fluid mineral operations as part of NEPA documents. The purpose of the BMPs is to mitigate anticipated effects to surface and subsurface resources, and to encourage operators to consider BMPs during the application process for permits to drill (BLM 2004e). BLM expects that wells drilled using BMPs will have fewer impacted acres of sagebrush habitat than has been estimated in EISs (*e.g.*, for the Powder River EIS) and consequently there will be less habitat loss and fragmentation (BLM 2004a). The effect of the IM and the BMPs is difficult to predict. Although the IM makes it BLM policy to consider the BMPs, their adoption is voluntary, not mandatory. The Service is available to provide BLM with technical assistance as they implement BMPs.

The Forest Service can place additional seasonal or temporal stipulations to protect sage-grouse on oil and gas developments on lands they manage (Forest Service in litt. 2004). Development of oil and gas resources on private lands does not always require mitigation (Braun 1998; Connelly *et al.* 2004), and most States do not place wildlife stipulations on development occurring on their lands. In Canada, no current legislation commits energy development to adhere to recommendations by Alberta Fish and Wildlife to reduce impacts of drilling in important sage-grouse habitats (Braun *et al.* 2002).

Renewable energy resources, such as windpower and geothermal energy, require many of the same features for construction and operation as do non-

renewable energy resources. Therefore, we anticipate that potential impacts from direct habitat losses, habitat fragmentation through roads and powerlines, noise, and increased human presence (Connelly *et al.* 2004) will generally be the same as already discussed for nonrenewable energy development. Windpower may have additional mortalities resulting from sage-grouse flying into turbine rotors or meteorological towers (Erickson *et al.* 2001). One sage-grouse was found dead within 45 m (148 ft) of a turbine on the Foote Creek Rim wind facility in south-central Wyoming, presumably from flying into a turbine (Young *et al.* 2003). During 3 years of monitoring operation, this is the only known sage-grouse mortality at this facility. Sage-grouse hens with broods have been observed using Foote Creek Rim, under the turbines, during surveys for other species (David Young, WEST, Inc., pers. comm. 2004). Mortalities at other facilities within sagebrush habitats are unknown and may not be monitored. However, most developed windpower facilities are not located within sagebrush habitats, and the average above-ground height of windpower facilities is 107 m (350 ft; Erickson *et al.* 2001), above the normal height of short-distance sage-grouse flights (Johnson *et al.* 2000).

Fifteen thousand wind turbines were projected to be operational in the United States by the end of 2001, not including the wind turbines located in California (Erickson *et al.* 2001). On September 10, 2004, the BLM released a draft programmatic EIS regarding the modification of land use plans in western States (including all States within the extant sage-grouse range) for the increased development of wind resources (BLM 2004f). Locations and potential impacts to sage-grouse were not discussed in specific detail.

Development of hydropower energy may impact sage-grouse through direct habitat losses, and increases in human traffic and activity if a resulting reservoir provides recreational resources. During construction, there may also be additional impacts of fugitive dust, gaseous emissions, road construction, increased traffic, and increased poaching activities. We do not anticipate that the potential for impacts from these activities to sage-grouse are different from those discussed previously for infrastructure issues. During the mid-1900s, a number of hydroelectric dams were developed on the Columbia and Snake Rivers in Washington and Oregon. More than 400 dams were constructed on the Columbia River system alone. The irrigation projects formed by these reservoirs precipitated conversion of large expanses of upland shrub-steppe habitat in the Columbia Basin for irrigated agriculture adjacent to the rivers as discussed previously in the Agriculture section (65 FR 51578). The creation of these reservoirs also directly inundated hundreds of kilometers of riparian habitats used by sage-grouse broods (Braun 1998). We were unable to find any information regarding the amount of sage-grouse habitat affected by hydropower projects in other areas of the species range beyond the Columbia Basin. We do not anticipate that future dam construction will result in large losses of sagebrush habitats. Although dam removal has been proposed for some areas, upland restoration goals, and the potential benefit to sage-grouse, are unknown.

The development of geothermal energy requires intensive human activity during field development (Suter 1978). Toxic gases may be released, and the type and effect of these gases depends on the geological formation in which drilling occurs. The amount of water necessary for drilling and condenser cooling may be high (Suter 1978). Therefore, water depletions may be a concern if such depletions result in the loss of limiting brood-rearing habitats (*see* discussion above). Geothermal activity on public lands is primarily in California, with over 23 producing leases. Nevada, and Utah also have producing leases (BLM 2004g). Impacts to sage-grouse were not identified.

We were unable to find any information regarding the commercial development of solar energy. We anticipate the effects from this resource will be those associated with direct habitat loss, fragmentation, roads, powerlines, increased human presence, and disturbance during facility construction, where solar energy development occurs.

Energy development was identified by the expert panel as the most significant extinction risk to the greater sage-grouse in the eastern portion of its range (Colorado, Wyoming and Montana). Their primary concern was the rapidity of development and the persistent demand for petroleum products. On a rangewide scale, however, energy development alone (not including the infrastructure associated with it—see Roads and Railroads above) ranked as the sixth most important extinction risk factor. To better understand the actual mechanism by which energy development affects greater sage-grouse, the panel suggested excluding some areas from extraction activities so that comparative analyses could be conducted.

Fire

The effects of fire on sagebrush habitats vary according to the species of sagebrush present, other plant species present (*e.g.,* the understory) and the frequency, size and intensity of fires. Widely variable estimates of mean fire intervals have been described in the literature: 35 to 100 years (Brown 2000), greater than 50 years for big sagebrush communities (McArthur 1994), 12 to 15 years for mountain big sagebrush (Miller and Rose 1999), 20 to 100 years (Peters and Bunting 1994), 10 to 110 years depending on sagebrush species and specific geographic area (Kilpatrick 2000), and 13 to 25 years (Frost 1998 cited in Connelly *et al.* 2004).

In general, fire tends to extensively reduce the sagebrush component within the burned areas. Big sagebrush (*A. tridentata* spp.), the most widespread species of sagebrush (McArthur 1994), is killed by fire. It does not re-sprout after burning (Agee 1994, Braun 1998, Wrobleski and Kauffman 2003), and can take as many as 30 to 50 years to recolonize an area (Agee 1994, Telfer 2000, Wambolt *et al.* 2001). This suggests that these sagebrush subspecies evolved in an environment where wildfire was infrequent (interval of 30 to 50 years) and patchy in distribution (Braun 1998). However, as noted by the expert panel, fire has been an important component in sagebrush systems.

A characteristic of natural fire in sagebrush stands is the incomplete burning that leaves areas of unburned sagebrush (sometimes referred to as islands of habitat) (Huff and Smith 2000). Huff and Smith (2000) noted that these unburned islands appear to be important to the future recolonization of the sagebrush community by providing sources of sagebrush seed. Prior to settlement by European immigrants, fire patterns in sagebrush communities were patchy, particularly in Wyoming big sagebrush, due to the discontinuous and limited fuels and unburned islands that remained after a fire (Miller and Eddleman 2000).

Connelly *et al.* (2004) summarized fire statistics from records obtained for the sagebrush biome (both wild and prescribed fires). The total area burned and the number of fires increased across the sagebrush ecoregions from 1960 to 2003. In the Southern Great Basin and Wyoming basins, average fire size increased. In the 40.5 million ha (100 million ac) sagebrush-steppe ecoregion (essentially the northern distribution of sagebrush), or drier sagebrush areas fire regimes have shifted to more frequent

fire episodes (Brown 2000). Fire was identified as the primary factor resulting in sage-grouse habitat conversion in Oregon (1.4 million ac; Oregon Department of Fish and Wildlife in litt. 2004).

In parts of the Great Basin (Nevada, Oregon and Utah) a decline in fire occurrence since the late 1800s has been reported in several studies, which coincides with fire suppression and reduction of fuels by introducing livestock (Touchan *et al.* 1995, Miller and Rose 1999, Kilpatrick 2000, Connelly *et al.* 2004). Long fire intervals and fire suppression can result in increased dominance of woody conifer species, such as western juniper (*Juniperus occidentalis*) (Wrobleski and Kauffman 2003), resulting in a near total loss of shrubs and sage-grouse habitat in localized areas (Miller and Eddleman 2000). Alternatively, invasion of exotic annuals, such as cheatgrass and medusahead (*Taeniatherum asperum*), has resulted in increases in the frequency and number of fires within the range of the greater sage-grouse (Young and Evans 1973, Brown 2000, Wrobleski and Kauffman 2003, Connelly *et al.* 2004). Following fire, sagebrush will not re-establish on its own for long time intervals, while non-native grasses quickly recover from fire and increase, effectively preventing sagebrush return. Management to restore an area to sagebrush after cheatgrass becomes established is difficult and usually ineffective (Paysen *et al.* 2000). As a result of this direct relationship between wildfire and the spread of invasive plants, large areas of habitat in the western distribution of the greater sage-grouse have already been converted to cheatgrass (Connelly *et al.* 2000c). The loss of habitat due to establishment of and dominance by non-native annual grasses results in the loss of sage-grouse populations (Connelly *et al.* 2000c).

Wildfires have removed extensive areas of sagebrush habitat in recent years. For example, 30 to 40 percent of the sage-grouse habitat in southern Idaho was destroyed in a 5-year period (1997–2001) due to range fires (Signe Sather-Blair, U.S. Bureau of Land Management, quoted in Healy 2001). The largest contiguous patch of sagebrush habitat in southern Idaho occupied approximately 283,000 ha (700,000 ac), (Michael Pellant, U.S. Bureau of Land Management, quoted in Healy 2001). Of that total area, about 202,000 ha (500,000 ac) burned in the years 1999 to 2001; half of the acres that burned for the first 3 to 5 years post fire, but accompanying forbs and surviving grasses increased biomass production. In another study, productivity of perennial herbs had increased by the second year post-burn to an average 2.2 times higher on burned verses control areas (Cook *et al.* 1994). In a 1998 prescribed burn on the Hart Mountain National Antelope Refuge, Crawford (1999) observed little change in species composition between unburned and burned areas. In the same general area, fall burning had no apparent effect on most primary foods although some Cichorieae species did increase (Pyle 1992). Fischer *et al.* (1996) also noted that vegetative cover of important forbs in the diets of sage-grouse was similar in unburned and burned habitat. In a review of 13 sites that had burned during a span of 2 to 32 years, Wambolt *et al.* (2001) reported that perennial grasses and forbs did not benefit from prescribed burning.

A variety of techniques have been attempted at re-establishing sagebrush post-fire, with mixed success (Cadwell *et al.* 1996, Quinney *et al.* 1996, Livingston 1998). Restoration of the sagebrush biome following a fire has been complicated not only by the invasion of exotic annual plant species, but the difficulty associated with establishing sagebrush seedlings (Boltz 1994). Wirth and Pyke (2003) reported that forb response post-fire is dependant on the forb community pre-burn. Habitat rehabilitation following fires has become a major activity in recent years, increasing from 281 km^2 (109 mi^2) in 1997 to 16,135 km^2 (6,230 mi^2) in 2002 with most treatments in Oregon, Idaho, and Nevada (Connelly *et al.* 2004), but we have no data on the extent of actual sagebrush restoration.

A clear positive response of greater sage-grouse to fire has not been demonstrated (Braun 1998). Call and Maser (1985) noted that fires could cause adverse conditions where cover is limited. Studies of prescribed fire in mountain big sagebrush at Hart Mountain National Antelope Refuge demonstrate short-term benefits in certain forbs, but the reduction in sagebrush cover potentially rendered habitat less suitable for nesting and brood rearing (Rowland and Wisdom 2002). Similarly, Nelle *et al.* (2000) reported that the removal of sage-grouse nesting and brood-rearing habitat by fire resulted in no increase in invertebrate abundance in the first year post-fire and hence, no benefit for sage-grouse chick foraging. This loss of nesting habitat created a long-term negative impact which would require 20 years of sagebrush re-growth before sufficient canopy cover was available for nesting birds (Nelle *et al.* 2000). Byrne (2002) reported the general avoidance of available burned habitats by nesting, brood-rearing, and broodless females. Connelly *et al.* (2000c) and Fischer *et al.* (1996) found that prescribed burning did not improve brood rearing habitat in Wyoming big sagebrush, as forbs did not increase and insect populations declined as a result of the treatment. Hence fire in this sagebrush type may negatively affect brood rearing habitat rather than improve it (Connelly and Braun 1997). However, Klebenow (1970), Gates (1983, as cited in Connelly *et al.* 2000c), Sime (1991 as cited in Connelly *et al.* 2000a), and Pyle and Crawford (1996) all indicated that fire could improve brood-rearing habitat. Slater (2003) reported that sage-grouse using burned areas were rarely found more than 60 m (200 feet) from the edge of the burn. In southeastern Idaho, Connelly *et al.* (2000c) concluded that, even though age-grouse populations were in decline across the study area, population declines were more severe in the post-fire years. Fischer *et al.* (1997) concluded that habitat fragmentation, as a result of fire, may influence distribution or migratory patterns in sage-grouse. Hulet (1983, as cited in Connelly *et al.* 2000a) documented the loss of leks as a result of fire.

The expert panel ranked wildfire as the second most important extinction risk factor for the greater sage-grouse in western portions of its range (the Great Basin—Utah, Idaho, Nevada, eastern Oregon), primarily due to the subsequent establishment of invasive species such as cheatgrass (see following discussion). Since invasive species has not become the problem in the eastern part of the greater sage-grouse range, the expert panel did not rank wildfire as high in that area. Across the species range, wildfire was identified as the third most important extinction risk factor by the expert panel.

Invasive Species/Noxious Weeds

Invasive species have been defined as those that are not native to an ecosystem and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health (Executive Order 13112, 1999). A wide variety of plants are considered invasive within the range of sagebrush ecosystems that the greater sage-grouse occupies (Wamboldt *et al.* 2002, Crawford *et al.* 2004, Connelly *et al.* 2004). Invasive species often cause declines in native plant populations by reducing light, water, and nutrients, and they grow so quickly that they outcompete other species (Wooten *et al.* 1996). The rate of spread for noxious weeds is approximately 931 ha (2,300 ac) per day on BLM lands and 1862 ha

(4,600 ac) per day on all public lands in the West (Knick *et al.* 2003). The area infested with exotic (non-native) invasive plants increased from 1.1 million ha (2.7 million ac) in 1985 to 3.2 million ha (7.9 million ac) in 1994 on BLM lands (Knick *et al.* 2003). The replacement of sagebrush vegetation communities with exotic species such as Russian thistle (*Salsola* spp.), halogeton (*Halogeton glomeratus*) and medusahead, has resulted in sage-grouse habitat loss (Miller and Eddleman 2000).

Young *et al.* (1972) found that plant communities of the Great Basin are highly susceptible to invasion by alien plants since native annuals are not adapted to occupy conditions created by intensive livestock grazing. Exotic plants can reduce and eliminate populations of plants that sage-grouse use for food and cover. As previously discussed, frequent fires with short intervals within sagebrush habitats favor invasion of cheatgrass, which is unsuitable as sage-grouse habitat (Schroeder *et al.* 1999). Cheatgrass then shortens the fire interval (from approximately 30 years down to 5 years), perpetuating its own persistence and spread, and exacerbating the effects of fire in remaining sage-grouse habitats (Connelly *et al.* 2004). Rehabilitation of an area to sagebrush after cheatgrass becomes established is extremely difficult (Connelly *et al.* 2004).

Large areas of habitat in the western distribution of the greater sage-grouse have already been converted to cheatgrass (Connelly *et al.* 2000a). Exotic plant communities are now dominant on more than 40 million ha in the Intermountain West (Mack 1981, as cited in Miller and Eddleman 2000). This invasive species also occurs in lower abundance throughout the entire range of the sage-grouse. Connelly *et al.* (2004) estimated the risk of cheatgrass invasion into sagebrush and other natural vegetation areas in the western part of the range of greater sage-grouse (Southern and Northern Great Basin, part of the Columbia Basin, and most of the Snake River Plain), where cheatgrass currently is concentrated. Based on elevation, landform, and south-facing slope parameters, Connelly *et al.* (2004) projected that 80 percent of this land area is susceptible to displacement by cheatgrass and that in 65 percent of this area cheatgrass is either already present or will be within 30 years. Wyoming-basin big sagebrush and salt desert scrub, which occupy over 40 percent of the Great Basin, are the cover types most susceptible to cheatgrass displacement (Connelly *et al.* 2004).

We could not find any studies that document or attempted to document a direct relationship between cheatgrass expansion and sage-grouse population declines. Yet the available evidence is clear that cheatgrass has invaded extensive areas in western parts of greater sage-grouse range, supplanting sagebrush plants upon which sage-grouse depend. Although there is a lack of evidence documenting that cheatgrass invasion causes sage-grouse declines, Connelly *et al.* (2000a) indicated that some sage-grouse populations have been affected and some will decline due to projected, continuing spread of cheatgrass domination in the absence of effective management.

Invasive species was ranked as the primary extinction risk factor for the greater sage-grouse by the expert panel. This concern was based on the ability of invasive species to outcompete sagebrush, the inability to effectively control invasives once they become established, and the ease with which invasive species are spread through other factors on the landscape, such as wildfire and infrastructure construction. Additionally, one member of the panel indicated that once invasive species become established, the ecology of the system can be changed, resulting in increased opportunities for other invasive species to establish, and subsequently, permanent habitat loss. Although cheatgrass has been identified as the primary invasive species resulting in sagebrush habitat conversion, the expert panel also cautioned that many other invasive species (*i.e.*, Japanese brome and various species of mustards and knapweeds) may be a greater threat in the future. The expert panel advised that based on current knowledge, prevention is the only effective tool to preclude large-scale habitat loss from invasive species in the future. However, they did not believe that the current rate of invasive species spread was sufficient to result in the complete loss of sagebrush, and therefore the extinction of sage grouse within the reasonably foreseeable future.

Pinyon-juniper

There has been an unprecedented expansion of pinyon-juniper woodlands, a native habitat type dominated by pinyon pine (*Pinus edulis*) and various juniper species (*Juniperus* spp.), with an estimated 10-fold increase in the Intermountain West since European immigrant settlement (Miller and Tausch 2001). The expansion of pinyon-juniper forests has resulted in the loss of many bunchgrass and sagebrush-bunchgrass communities that formerly dominated the Intermountain West (Miller and Tausch 2001). The major factor cited for the increase in the pinyon-juniper forest type is a decrease in fire return intervals (Miller and Tausch 2001). Other factors facilitating the increase include historical livestock grazing patterns, which reduced the buildup of fine fuels that more readily carry fire, and possibly increases in global carbon dioxide concentrations and climate change (Miller and Rose 1999, Miller and Tausch 2001).

Connelly *et al.* (2004) estimated the risk of pinyon-juniper displacement of sagebrush for a large portion of the Great Basin, based on site elevation, proximity to extant pinyon-juniper, precipitation, and topography. Using these parameters, Connelly *et al.* (2004) projected the risk that sagebrush habitats would be displaced by pinyon-juniper within the next 30 years. They found that about 60 percent of sagebrush in the Great Basin was at low risk of being displaced by pinyon-juniper, 6 percent of sagebrush is at moderate risk, and 35 percent of sagebrush habitats are at high risk of displacement (Connelly *et al.* 2004). Connelly *et al.* (2004) also found that mountain big sagebrush appears to be the sagebrush type most at risk for pinyon-juniper displacement. When juniper increases in mountain big sagebrush communities, shrub cover declines and the season of available succulent forbs is shortened due to soil moisture depletion (Crawford *et al.* 2004). Connelly *et al.* (2004) caution that additional field research is needed to support their estimates.

Pinyon-juniper expansion into sagebrush habitats, with subsequent replacement of sagebrush shrub communities by woodland has been documented (Miller *et al.* 1999, Miller and Tausch 2001, Crawford *et al.* 2004, Connelly *et al.* 2004). It is likely that further losses of sagebrush habitat due to pinyon-juniper expansion will occur within the western part of greater sage-grouse range, especially the southern Great Basin. We could find no documentation, however, that pinyon-juniper expansion is a factor affecting sage-grouse habitat persistence in the eastern portion of the range (Wyoming Basin, Colorado Plateau, and silver sagebrush areas (Connelly *et al.* 2004)). Although we could not locate any studies that documented the effect of pinyon-juniper expansion on greater sage-grouse, Commons *et al.* (1999) found that the number of male Gunnison sage-grouse on leks in southwest Colorado doubled after pinyon-juniper removal and mechanical treatment of mountain sagebrush and

deciduous brush. Hence we can infer that some sage-grouse populations have been affected and some will decline due to projected increases in the pinyon-juniper type, at least within parts of the Great Basin. The expert panel considered pinyon-juniper as an extinction risk for the greater sage-grouse in the western portion of its range, but only ranked it as a moderate risk across the entire species' range.

Urbanization

Low densities of indigenous peoples have been present for more than 12,000 years in the historical range of sage-grouse. By 1900, Connelly *et al.* (2004) reported that less than 1 person/km^2 resided in 51 percent of the 325 counties within their assessment area, and densities greater than 10 persons/km occurred in 4 percent of the counties. By 2000, counties with less than 1 person/km^2 occurred in 31 percent of the 325 counties and densities greater than 10 persons/km^2 occurred in 22 percent of the counties (Connelly *et al.* 2004). Today, the dominant urban areas are located in the Bear River Valley of Utah, the portion of Bonneville Basin southeast of the Great Salt Lake, the Snake River Valley of southern Idaho, and in the Columbia River Valley of Washington (Rand McNally Road Atlas 2003, Connelly *et al.* 2004).

Urban development has eliminated some sage-grouse habitat (Braun 1998). Interrelated effects from urban/suburban development include construction of associated infrastructure (roads, powerlines, and pipelines) and predation threats from the introduction of domestic pets and increases in predators subsidized by human activities (*e.g.,* landfills). More recent urban expansion into rural subdivisions is also resulting in direct habitat loss and conversion, as well as alteration of remaining sage-grouse habitats around these areas due to the presence of humans and pets (Braun 1998; Connelly *et al.* 2000a). In some Colorado counties, up to 50 percent of sage-grouse habitat is under rural subdivision development, and it is estimated that 3 to 5 percent of all sage-grouse historical habitat in Colorado has already been converted into urban areas (Braun 1998). We are unaware of similar estimates for other States within the range of the greater sage-grouse, and therefore cannot determine the effects of this factor on a rangewide basis.

Municipal solid waste landfills (landfills) have been shown to contribute to increases in common raven populations (Knight *et al.* 1993, Restani *et al.* 2001, Webb *et al.* 2004). Ravens are known to prey on sage-grouse and have been considered a restraint on sage-grouse population growth in some locations (Batterson and Morse 1948, Autenrieth 1981, Altstatt 1995). Landfills are found in every State and a number of these are located within or adjacent to sage-grouse habitat. However, no studies could be found that linked landfill presence, common raven populations, and sage-grouse population levels. Urbanization was considered as a moderate extinction risk for the greater sage-grouse by the expert panel, primarily as a result of habitat loss and fragmentation from increasing resource needs to support expanding human populations.

Summary of Factor A

Loss of sagebrush and greater sage-grouse habitat has been occurring since arrival of European settlers in the 1800s, as evidenced by the change in the sage-grouse's distribution and loss of local populations (Schroeder *et al.* 2004). Habitat loss and fragmentation continues today as a result of the many factors described in the preceding paragraphs. When the expert panel was asked to identify and rank extinction risk factors for the greater sage-grouse, the threats ranked highest in importance were, in order: invasive species, infrastructure as related to energy development and urbanization, wildfire, agriculture, grazing, energy development, urbanization, strip/coal mining, weather, and pinyon-juniper expansion. However, the majority of the expert panel did not believe that these threats were occurring at such a rate to cause the extinction of the greater sage-grouse within the next 60 to 100 years. Other threats (*e.g.,* disease and predation, hard-rock mining, hunting, contaminants) were considered by the expert panel to be of lesser importance to the sage-grouse. Several experts identified concerns with the synergistic effects of threat factors (*e.g.,* infrastructure increases and invasive species expansion). The expert panelists also discussed that the range of the greater sage-grouse would likely contract and fragment due to habitat modifications and losses.

Based on the information gathered through the scientific literature, industry, public comments and State and Federal agencies, as well as the opinions of the expert panel, Service biologists determined that the principal habitat-related threats are not proceeding at a rate that will threaten the continued existence of the species within the foreseeable future. In addition, the wide distribution of the species, presence of large ''core'' populations, recent population trends in some areas throughout the species range (indicating that populations are stable and/or increasing), and large blocks of sagebrush habitat are all factors that contributed to the determination that the greater sage-grouse is not in danger of extinction within the foreseeable future. Thus, based on the best available scientific and commercial data, we have concluded that present or threatened destruction, modification, or curtailment of the sage-grouse's habitat or range is not a factor that threatens or endangers the species over all or a significant portion of its range. In reaching this conclusion, we did identify that continued efforts to conserve sagebrush ecosystems and address habitat threats are important to long-term persistence of the greater sage-grouse.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Presently, there is no commercial trade in greater sage-grouse, and under State and Federal laws the sale of sage-grouse meat, feathers and body parts is illegal. Historically, the greater sage-grouse was heavily exploited by commercial and sport hunting in the late 1800s and early 1900s (Patterson 1952; Autenrieth 1981). Hornaday (1916) and others alerted the public to the risk of extinction to the species as a result of this overharvest. In response, many States closed sage-grouse hunting seasons by the 1930s (Patterson 1952, Autenrieth 1981). The impacts of hunting on greater sage-grouse during those historical decades may have been exacerbated by impacts from human expansion into sagebrush-steppe habitats (Girard 1937). With the increase of sage-grouse populations by the 1950s, limited hunting seasons were again allowed in most portions of the species range (Patterson 1952, Autenrieth 1981).

Hunting

Greater sage-grouse are currently legally sport-hunted in 10 of 11 States where they occur (Connelly *et al.* 2004), and hunting is regulated by State wildlife agencies. The hunting season for sage-grouse in Washington was closed in 1988 (Stinson *et al.* 2004). In Canada sage-grouse hunting is not allowed (Connelly *et al.* 2004). Most State agencies base their hunting regulations on local population information and peer-reviewed scientific literature regarding the impacts of hunting on greater sage-grouse (Bohne in litt., Wyoming Game and Fish Department, 2003). Hunting seasons are reviewed annually, and

States change harvest management based on harvest and population data (Bohne in litt, Wyoming Game and Fish Department, 2003). For example, Wyoming delayed their season to allow for more equitable distribution of hunting mortality across all age and sex classes, thereby reducing female mortality as compared to previous seasons (Bohne in litt., Wyoming Game and Fish Department, 2003).

Relatively few studies have addressed the effect of recreational hunting on sage-grouse populations. These studies suggest that hunting may be compensatory (*i.e.,* mortality that replaces deaths that would have happened otherwise due to other causes such as predation, or mortality that is compensated by increased productivity; Crawford 1982), have no measurable effect on spring sage-grouse densities (Braun and Beck 1996), or may be additive (*i.e.,* mortality that adds more deaths per year to the total otherwise attributable to other causes, and is not compensated by increased productivity; Zunino 1989, Connelly *et al.* 2000a). Johnson and Braun (1999) concluded that harvest mortality may be additive for the species if brood hens and young birds sustain the highest hunting mortality within a population. No studies have demonstrated that regulated hunting is a primary cause of widespread reduced numbers of greater sage-grouse (Connelly *et al.* 2004).

Hunting seasons that are managed so as to evenly distribute mortality across all age and sex classes are less likely to negatively affect subsequent breeding populations (Braun 1998). Connelly *et al.* (2000a) state that most greater sage-grouse populations can sustain hunting if the seasons are carefully regulated to keep total mortality within sustainable levels—but do not evaluate the extent to which such careful regulation has been successfully implemented. A maximum sustainable harvest rate has not been determined for greater sage-grouse populations (Connelly *et al.* 2004). All States with hunting seasons have changed limits and season dates to more evenly distribute hunting mortality across the entire population structure by harvesting birds after females have left their broods (Bohne in litt., Wyoming Game and Fish Department, 2003). Total annual gun harvest of sage-grouse across the 10 western States that have seasons was approximately 24,000 birds in 2003 (Connelly *et al.* 2004). We could not locate any data to assess how those changes correlate with population trends.

All 10 States that allow gun hunting of sage-grouse also allow falconers to hunt sage-grouse, although no falconers are currently hunting sage-grouse in South and North Dakota (John Wrede, South Dakota Game, Fish and Parks, pers. comm. 2004; Gerald Kobriger, North Dakota Game and Fish Dept., pers. comm. 2004). Montana (Rick Northrup, Montana Dept. Fish, Wildl. Parks, pers. comm. 2004), Oregon (Dave Budeau, Oregon Dept. Fish and Wildlife, pers. comm. 2004), and Idaho (Tom Hemker, Idaho Dept. Fish and Game, pers. comm. 2004) indicated that they do not have data on the level of harvest through falconry, but believe such harvest is low due to the few numbers of falconers and their dispersed activities. Wyoming reported a take of 63 sage-grouse by falconers. We are not aware of any studies that demonstrate that falconry take of greater sage-grouse influences population trends.

We surveyed the State fish and wildlife agencies within the range of greater sage-grouse to determine what information they had on illegal harvest (poaching) of the species. Two states, South Dakota and North Dakota indicated that they had no known incidents of poaching (John Wrede, South Dakota Game, Fish and Parks, pers. comm. 2004; Gerald Kobriger, North Dakota Game and Fish Dept., pers. comm. 2004). None of the remaining States had any quantitative data on the level of poaching in their States. Based on these results, illegal harvest of greater sage-grouse poaching appears to occur at low levels. We are not aware of any studies or other data that demonstrate that poaching has contributed to sage-grouse population declines.

Religious, Scientific, and Recreational Use

Some Native American tribes harvest sage-grouse as part of their religious or ceremonial practices. In Wyoming, Native American hunting occurs on the Wind River Indian Reservation, with about 20 males per year taken off of leks in the spring (Tom Christiansen, Wyoming Game and Fish Dept., pers comm. 2004), and a harvest of 30 males in the fall (U.S. Fish and Wildlife Service, in litt. 2004). No harvest by Native Americans for religious or ceremonial purposes occurs in South Dakota, North Dakota, Colorado, Washington, or Oregon (John Wrede, South Dakota Game, Fish and Parks affiliation pers. comm. 2004; Gerald Kobriger North Dakota Game and Fish Dept., pers. comm. 2004; Anthony Apa, Colorado Div. Wildl., pers. comm. 2004; Michael Schroeder, Washington Dept. Fish and Wildlife, pers. comm. 2004; and Dave Budeau, Oregon Dept. Wildl., pers. comm. 2004).

Greater sage-grouse are the subject of many scientific research studies and some of these field studies include the capture and handling of the species. Of the 11 western States where sage-grouse occur, all except South Dakota and North Dakota (John Wrede, South Dakota Game, Fish and Parks, pers. comm. 2004; Gerald Kobriger, North Dakota Game and Fish Dept., pers. comm. 2004) reported some type of field studies on sage-grouse between 1999 to 2004 that included the capture, handling, and subsequent banding, or banding and radio-tagging of sage-grouse. For these 9 States, 2,491 birds were captured and processed over six years, of which 68 birds (about 2.7 percent of handled birds) died due to capture, handling, or radio-tagging processes. We are not aware of any studies that document that this level of taking has affected any sage-grouse population trends.

Greater sage-grouse have been translocated in several States and the Province of British Columbia (Reese and Connelly 1997). Reese and Connelly (1997) documented the translocation of over 7,200 birds between 1933 and 1990, and additional translocation efforts have taken place since 1990. Only 5 percent of the translocation efforts documented by Reese and Connelly (1997) were considered to be successful in producing sustained, resident populations at the translocation sites. In 2004 the State of Nevada supplied the State of Washington with greater sage-grouse to increase the genetic diversity of geographically isolated populations. No information is available at this time regarding the success or effectiveness of this translocation. Given the low numbers of birds that have been used for translocation spread over many decades it is unlikely that the removals from source populations have contributed to greater sage-grouse declines, while the limited success of translocations has also likely had nominal impact on rangewide population trends.

Greater sage-grouse are also subject to a variety of non-consumptive uses such as bird watching or tour groups visiting leks, general wildlife viewing, and photography. Daily human disturbances on sage-grouse leks could cause a reduction in mating, and some reduction in total production (Call and Maser 1985). Only a few leks in each state receive regular viewing use visitation by humans during the strutting season, and most States report no known impacts from this use (John Wrede, South Dakota Game, Fish and

Parks, pers. comm. 2004; Rick Northrup, Montana Dept. Fish, Wildl. Parks, pers. comm. 2004; Tom Christiansen, Wyoming Game and Fish Dept., pers. comm. 2004; Tom Hemker, Idaho Dept. Fish and Game, pers. comm. 2004). Only Colorado had data regarding the effects of non-consumptive use, which suggested that controlled lek visitation has not impacted sage-grouse (Anthony Apa, Colorado Div. Wildl., pers. comm. 2004). State agencies in Oregon, Nevada, and North Dakota report that there is potential for impacts at individual leks that are the most heavily used for viewing (Dave Budeau, Oregon Dept. Wildl., pers. comm. 2004; Shawn Espinosa, Nevada Divison of Wildl., pers. comm., 2004; Gerald Kobriger North Dakota Game and Fish Dept., pers. comm. 2004). The BLM has reported movement of a sage-grouse lek, and decreasing male numbers on the same lek apparently in response to lek viewing at that location (Jan Hanf, BLM, pers. comm. 2004). We were not able to locate any studies documenting how lek viewing, or other forms of non-consumptive recreational uses, of sage-grouse are related to sage-grouse population trends and we have no indication that they are contributing to declining trends.

Summary of Factor B

The expert panel did not identify hunting as a primary threat factor for the greater sage-grouse. In their discussion of extrinsic threat factors, the expert panel identified that hunting occurs within a limited timeframe and at a time of the year when productivity is unlikely to be affected significantly. In addition, they noted that hunting is a regulated management technique that can be quickly adjusted to changing conditions. No data were collected suggesting that poaching, non-consumptive use, or scientific use limit greater sage-grouse populations rangewide. Based on the best scientific and commercial data available, including input from the expert panel, we have concluded that overutilization for commercial, recreational, scientific, or educational purposes is not a factor that endangers or threatens the sage-grouse throughout all or a significant portion of its range.

C. Disease or Predation

Disease

There have been few systematic surveys for parasites or infectious diseases of the greater sage-grouse, and therefore, their role in population declines is unknown for this species (Connelly *et al.* 2004). Some early studies have suggested that sage-grouse populations are adversely affected by parasitic infections (Batterson and Morse 1948). Parasites have also been implicated in sage-grouse mate selection, with potentially subsequent effects on the genetic diversity of this species (Boyce 1990; Deibert 1995), but Connelly *et al.* (2004) note that while these relationships may be important to the long-term ecology of greater sage-grouse, they have not been shown to be significant to the immediate status of populations. Connelly *et al.* (2004) have suggested that diseases and parasites may limit isolated sage-grouse populations. The potential effects of emerging diseases require additional study.

Sage-grouse are hosts to many parasites (Connelly *et al.* 2004; Thorne *et al.* 1982). Only the protozoan, *Eimeria* spp., which causes coccidiosis (Connelly *et al.* 2004), has proven to be fatal, but mortality is not 100 percent, and young birds that survive an initial infection typically do not succumb to subsequent infections (Thorne *et al.* 1982). Infections tend to be localized to specific geographic areas. Most cases of coccidiosis in greater sage-grouse have been found where large numbers of birds congregated, resulting in soil and water contamination by fecal material (Connelly *et al.* 2004). While the role of this parasite in population changes is unknown, Petersen (2004) hypothesized that coccidiosis could be limiting for local populations, as this parasite causes decreased growth and significant mortality in young birds, thereby potentially limiting recruitment. However, no cases of sage-grouse mortality resulting from coccidiosis have been documented since the early 1960s (Connelly *et al.* 2004).

Other parasites which have been documented in the greater sage-grouse include, *Sarcosystis* ssp (another form of coccidea), blood parasites (including avian malaria, *Leucocytozoon* spp., *Haemoproteus* spp., and *Trypanosoma avium*), *Tritrichomonas simoni,* tapeworms, gizzard worms (*Habronema* spp. and *Acuaria* spp.), cecal worms, and filarid nematodes (Thorne *et al.* 1982; Connelly *et al.* 2004; Petersen 2004). None of these parasites have been known to cause mortality in the greater sage-grouse. Sub-lethal effects of these parasitic infection on sage-grouse have never been studied.

Greater sage-grouse host many external parasites, including lice, ticks, and dipterans (midges, flies, mosquitoes, and keds) (Connelly *et al.* 2004). Most ectoparasites do not produce disease, but can serve as disease vectors or cause mechanical injury and irritation (Thorne *et al.* 1982). Many biologists contend that ectoparasites can be detrimental to their hosts, particularly when the bird is stressed by inadequate habitat or nutritional conditions (Petersen 2004). Some studies have suggested that lice infestations can affect sage-grouse mate selection (Boyce 1990; Spurrier *et al.* 1991; Deibert 1995), but population impacts are not known (Connelly *et al.* 2004).

Greater sage-grouse are also subject to a variety of bacterial, fungal, and viral pathogens. The bacteria *Salmonella* spp., has caused mortality in the greater sage-grouse; the bacteria apparently contracted through of exposure to contaminated water supplies around livestock stock tanks (Connelly *et al.* 2004). Other bacteria found in sage-grouse include *Escherichia coli,* botulism (*Clostridium* spp.), avian tuberculosis (*Mycobacterium avium*), and avian cholera (*Pasteurella multocida*). These bacteria have never been identified as a cause of mortality in greater sage-grouse and the risk of exposure and hence, population effects, is low (Connelly *et al.* 2004). One case of aspergillosis, a fungal disease, has been documented in sage-grouse, but there is no evidence to suggest this fungus plays a role in limiting greater sage-grouse populations (Connelly *et al.* 2004; Petersen 2004).

Viral diseases could cause serious diseases in grouse species and potentially influence population dynamics (Petersen 2004). However, prior to 2003 only avian infectious bronchitis (caused by a coronavirus) had been identified in the greater sage-grouse. No clinical signs of the disease were observed.

West Nile virus (WNv; *Flavivirus*) was introduced into the northeastern United States in 1999 and has subsequently spread across North America (Marra *et al.* 2004). This virus was first diagnosed in greater sage-grouse in 2003, and has been shown to affect sage-grouse survival rates. Data from four studies in the eastern half of the sage-grouse range (Alberta, Montana, Wyoming) showed survival in these populations declined 25 percent in July and August as a result of the WNv infection (Naugle *et al.* 2004). Populations of grouse that were not affected by WNv showed no similar decline. Additionally, individual sage-grouse in exposed populations were 3.4 times more likely to die during July and August, the ''peak'' of WNv occurrence, than birds in non-exposed populations (Connelly *et al.* 2004; Naugle *et al.* 2004). Subsequent declines in both male and female lek attendance in infected areas in 2004 compared with years

before WNv was detected in this area suggest outbreaks could contribute to local population extirpation (Walker *et al.* 2004). Lek surveys in 2004, however, indicated that regional sage-grouse populations did not decline, suggesting that the initial effects of WNv were localized (Oedokoven, unpublished data, 2004). Five sage-grouse deaths resulting from WNv have been identified in 2004, four from the Powder River Basin area of northeastern Wyoming and southeastern Montana (Dave Naugle, U. Montana, pers. comm. 2004), and one from the northwestern Colorado, near the town of Yampa (Anthony Apa, Colorado Division of Wildlife, pers. comm. 2004). An additional three sage-grouse deaths in California from WNv were reported in 2004 (Scott Gardner, Ca. Dept. Fish Game, pers. comm. 2004). In 2004, WNv was detected in a variety of species in western Colorado, Utah, Idaho, Nevada, California and Oregon (U.S. Geological Service, National Wildlife Health Laboratory, 2004). Outside of the Powder River Basin of Wyoming and Montana, California and western Colorado, we are unaware of comprehensive efforts to track sage-grouse mortalities. Therefore, the actual distribution and extent of WNv in sage-grouse in 2004 is unknown.

Greater than 300 serum samples taken from live-captured wild grouse in known WNv infected areas were negative for WNv antibodies, indicating that these animals had not been exposed to the virus (Todd Cornish, U. Wyoming, pers. comm. 2004). The lack of birds with antibodies suggests that sage-grouse do not survive a WNv infection because if any were surviving, at least some of the birds sampled from the exposed areas should be survivors with antibodies (Connelly *et al.* 2004; Oedekoven 2004). All 25 wild sage-grouse brought into a controlled research laboratory and inoculated with various doses of WNv, including doses thought to be less than the amount that would be delivered by a typical mosquito bite, perished within 8 days of infection (Todd Cornish, U. of Wyoming, unpublished data, 2004). In addition, direct exposure of non-infected sage-grouse to infected sage-grouse under laboratory conditions also resulted in 40 percent mortality of 6 individuals, in the absence of the mosquito vector for WNv (*Culex tarsalis*) (Todd Cornish, U. of Wyoming, unpublished data, 2004). These experimental results, combined with field data, suggest that a widespread WNv infection could negatively impact greater sage-grouse.

Late-summer habitat requirements of sage-grouse potentially increase their exposure to WNv. Sage-grouse hens and broods congregate in mesic habitats in the mid- to late summer, thereby placing them in the same potential habitats as the WNv mosquito vector when the mosquitoes are likely to be active. Surface water sources that have been created for agricultural, livestock, and oil and gas activities may increase the contact between sage-grouse and the mosquito vector (Naugle *et al.* 2004; Connelly *et al.* 2004; Walker *et al.* 2004). Losses from WNv come at a time of year when survival is otherwise typically high for adult females (Schroeder *et al.* 1999; Connelly *et al.* 2000a; Aldridge and Brigham 2003), thus potentially making these WNv deaths additive to other mortality sources and reducing average annual survival.

Predation

Predation is the most commonly identified cause of direct mortality for sage-grouse (Schroeder *et al.* 1999, Connelly *et al.* 2000b). Greater sage-grouse have many predators, which vary in relative importance depending on the sex and age of the bird and the time of year. Predators of adult greater sage-grouse include coyotes (*Canis latrans*), bobcats (*Lynx rufus*), weasels (*Mustela* spp.), golden eagles (*Aquila chrysaetos*), red-tailed hawks (*Buteo jamaicensis*), Swainson's hawks (*B. swainsoni*), and ferruginous hawks (*B. regalis*) (Hartzler 1974, Schroeder *et al.* 1999, Rowland and Wisdom 2002, Schroeder and Baydack 2001). In the Strawberry Valley of Utah, Bambrough *et al.* (2000) noted that low survival of greater sage-grouse may have been due to an unusually high density of red foxes.

Adult male greater sage-grouse are most susceptible to predation during the mating season as they are very conspicuous while performing their mating display. And, because leks are attended daily, predators may be attracted to these areas during the breeding season (Braun in litt. 1995). However, given the greater sage-grouse's breeding system, where only a few males are selected by all the females for mating, loss of some adult males on the lek is not likely to have significant population effects (Braun in litt. 1995).

Adult female greater sage-grouse are most susceptible to predators while on the nest or during brood-rearing when they are with young chicks (Schroeder and Baydack 2001). Autenrieth (1981), referencing annual predator losses, concluded that predation of eggs was the most important population constraint in Idaho at that time.

Juvenile grouse are susceptible to predation from badgers, red foxes, coyotes, weasels, American kestrels (*Falco sparverius*), merlins (*F. columbarius*), northern harriers (*Circus cyaneus*), and other hawks (Braun in litt. 1995; Schroeder *et al.* 1999). Gregg *et al.* (2003a, 2003b) found that chick predation mortality ranged from 27 percent to 51 percent in 2002 and 10 percent to 43 percent in 2003 on three study sites in Oregon. The juvenile mortality rate, during the first few weeks after hatching, was estimated to be 63 percent (Wallestad 1975 in Schroeder and Baydack 2001). While chicks are very vulnerable to predation during this period, other causes of mortality, such as weather, are included in this estimate.

Nesting success is positively correlated with the presence of big sagebrush and relatively thick grass and forb cover (Schroeder and Baydack 2001). Losses of nesting adult hens and nests appear to be related to the amount of herbaceous cover surrounding the nest (Braun in litt. 1995; Braun 1998; Coggins 1998, Connelly *et al.* 2000b; Schroeder and Baydack 2001). DeLong *et al.* (1995) found a lower probability of nest predation at nest sites with tall grass and medium shrub cover in Oregon. Removal or reduction of this cover, by any method, can reduce nest success and adult hen survival. Similarly, habitat alteration that reduces cover for young chicks can increase the rate of predation on this age class (Schroeder and Baydack 2001). Losses of breeding hens and young chicks can influence overall greater sage-grouse population numbers, as these two groups contribute most significantly to population productivity.

Agricultural development, landscape fragmentation, and human populations have the potential to increase predation pressure by forcing birds to nest in marginal habitats, by increasing travel time through habitats where they are vulnerable to predation, and by increasing the diversity and density of predators (Ritchie *et al.* 1994, Schroeder and Baydack 2001, Connelly *et al.* 2004; Summers *et al.* 2004). Increasing populations of predators that historically were relatively rare in the sagebrush landscape, and are very effective nest predators, such as red fox and corvids (Sovada *et al.* 1995), have the potential to increase rates of predation on sage-grouse. Connelly *et al.* (2000a) noted that ranches, farms, and housing developments have resulted in the introduction of nonnative predators including domestic dogs (*Canis domesticus*) and cats (*Felis domesticus*) into greater sage-grouse

habitats. Where greater sage-grouse habitat has been altered in localized areas, the influx of predators can limit populations (Gregg *et al.* 1994; Braun in litt. 1995; Braun 1998; DeLong *et al.* 1995; Schroeder and Baydack 2001). Habitat fragmentation and the resultant predation increase may be a limiting factor for the Gunnison sage-grouse (Oyler-McCance *et al.* 2001).

Research conducted to determine nest success and greater sage-grouse survival has concluded that predation typically does not limit greater sage-grouse numbers (Connelly and Braun 1997, Connelly *et al.* 2000a, Connelly *et al.* 2000b, Wambolt *et al.* 2002). The conclusion that predation is not generally a limiting factor is supported by evidence showing that predator removal does not have long-lasting effects on sage-grouse population size or stability over large regions (Cote and Sutherland 1997, Schroeder *et al.* 1999, Wambolt *et al.* 2002). For example, Slater (2003) demonstrated that coyote control failed to produce an effect on greater sage-grouse nesting success in southwestern Wyoming. In their review of literature regarding predation, Connelly *et al.* (2004) noted that only two of nine studies examining survival and nest success indicated that predation had limited a sage-grouse population by decreasing nest success. However, both studies indicated low nest success due to predation was ultimately related to poor nesting habitat. Connelly *et al.* (2004) further noted that the idea that predation is not a widespread factor depressing sage-grouse populations is supported by studies of nest success rates (which indicate nest predation is not a widespread problem), by the relatively high survival of adult birds, and by the lack of an effect on nesting success as a result of coyote control in Wyoming.

Summary of Factor C

The expert panel did not identify disease or predation as primary extinction risk factors for the greater sage-grouse. The experts expressed concerns about the potential effects of future WNv outbreaks, but were unable to draw any definitive conclusions about extinction risk to sage-grouse posed by this disease because insufficient information is available to do so. Connelly *et al.* (2004) noted that prior to the recent emergence of WNv there was little evidence to suggest that pathogens or parasites were major threats to the greater sage-grouse.

Although we have relatively poor understanding of the actual effects of disease or parasites on sage-grouse populations, since systematic surveys have never been conducted, we continue to be concerned about the potential effects of WNv on greater sage-grouse. We will closely monitor future infections and observed population effects to the greater sage-grouse. Predation has also not been identified as a limiting factor to sage-grouse populations, except in areas of habitat degradation and loss. Thus, based on the best scientific and commercial data available, we have concluded that disease and predation are not factors that endanger or threaten the sage-grouse throughout all or a significant portion of its range at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Local Laws and Regulations

Approximately 27 percent of the sagebrush land in the United States is privately owned (Connelly *et al.* 2004). We are not aware of any county or city ordinances that provide protection specifically for the greater sage-grouse or their habitats on private land, although we recognize that such ordinances could be proposed as rural governments and local sage-grouse working groups investigate strategies to protect sage-grouse on private lands. We recognize that county or city ordinances that address agricultural lands, transportation, and zoning for various types of land uses have the potential to influence sage-grouse (*e.g.*, zoning that protects open space can retain suitable sage-grouse habitat, and zoning that allows a housing development and associated roads can result in destruction and/or fragmentation of habitat occupied by sage-grouse during some part of their life cycle). However, we have no detailed information regarding the nature or extent of zoning efforts within the species range and its direct or indirect effects on populations and habitats.

State Laws and Regulations

In the United States, greater sage-grouse are managed by State wildlife agencies on all lands within the State as resident native game birds (Connelly *et al.* 2004), except in Washington, where the bird was listed as a State-threatened species in 1998 and they are managed as a State-listed threatened species (Stinson *et al.* 2004). The classification as a resident game bird (with the exception of Washington) allows the direct human taking of the bird during hunting seasons authorized and conducted under State laws and regulations. Currently, harvest of greater sage-grouse is authorized by 10 of the 11 western States where they occur (Connelly *et al.* 2004). Sage-grouse hunting is prohibited is Washington, where the season has been closed since 1988 (Stinson *et al.* 2004).

Each State agency bases its hunting regulations on local population information and peer-reviewed scientific literature regarding the impacts of hunting on the greater sage-grouse (Bohne in litt., Wyoming Game and Fish Department 2003). Hunting seasons are reviewed annually by each State, and they implement adaptive management based on harvest and population data (U.S. Fish and Wildlife Service 2004; 69 FR 21484; Montana Sage Grouse Work Group (MSGWG) 2004).

State agencies directly manage 5 percent of the total landscape dominated by sagebrush in the United States and various State laws and regulations identify the need to conserve wildlife habitat (Connelly *et al.* 2004). As an example, in Colorado, ''wildlife and their environment'' are to be protected, preserved, enhanced and managed (Colorado Revised Statutes, Title 33, Article 1–101 *in* Connelly *et al.* 2004). Laws and regulations in Oregon, South Dakota, and California have similar provisions, and allow for acquisition of funding to acquire and conserve wildlife habitat (Connelly *et al.* 2004). Some States also have the legal authority to make land purchases and/or to enter into easements with landowners regarding wildlife habitats. For example, Montana Fish Wildlife and Parks (MTFWP) has authority to acquire easements or purchase land directly to protect wildlife habitat (MSGWG 2004). The Washington Department of Fish and Wildlife (WADFW) has designated sage-grouse habitat as a ''priority habitat'' which identifies this habitat as a priority for conservation and management, and provides species and habitat information to interested parties for land use planning purposes (Stinson *et al.* 2004). However, the recommendations provided under this program are guidelines, not regulations; thus, their use is not required.

Alternatively, some States have laws that directly address the management of certain State lands and require that it be based on maximizing financial returns. For example, under a provision of the State Constitution (Article IX-Section 8), the Idaho Department of Lands (IDL) is directed to manage approximately 2.4 million acres of state endowment lands ''in such a manner as to secure the maximum long-term financial return to the beneficiary institution to which granted.'' The IDL can take measures that protect or enhance wildlife habitat subject to their fundamental

requirement to secure maximum long-term financial returns (Idaho Dept. Fish and Game in litt. 2004). The Montana Department of Natural Resources and Conservation (MTDNRC) is responsible for managing approximately 5.1 million surface acres and 6.3 million acres of subsurface trust land distributed across the State (MSGWG 2004). Under State law, proceeds from the sale and management of this trust land are used to support and maintain public schools and various State institutions. The obligation for management and administration of these trust lands is to obtain the greatest benefit for the school trusts, and the monetary return must be weighed against the long-term productivity of the land to ensure continued future returns to the trusts (MSGWG 2004). State lands which are managed to enhance economic returns for the benefit of education trust funds may or may not include benefits for wildlife habitat. The Service does not have complete information pertaining to all State laws and regulations that directly or indirectly relate to greater sage-grouse habitat on these lands.

All States within the extant range of the greater sage-grouse have, or are developing, conservation plans for the species and its habitats. These efforts are in addition to current research and monitoring efforts for the greater sage-grouse conducted by State agencies. The conservation plans are focused on addressing local sage-grouse or sagebrush habitat concerns through a variety of mechanisms (*i.e.*, changes in regulations, habitat improvement projects, etc.). These plans are in various stages of development, and many have not yet begun implementation of actual habitat conservation practices. As previously stated, 20 of approximately 300 individual efforts contained within the 27 plans we received met the standard in PECE (*see* 68 FR 15115) for having sufficient certainty of implementation and effectiveness (*see* the ''Status Review Process'' section, above, for further details regarding PECE). Of these 20 efforts, 15 involved state wildlife agencies (the other 5 involved the BLM or Forest Service). The members of the expert panel were provided with information regarding these 20 projects, and were given the opportunity to re-evaluate their projections of extinction risk to the greater sage-grouse on a rangewide basis considering these. Only one panelist determined that these cumulative efforts would reduce the risk of extinction to the species. All the panelists agreed that local conservation efforts are necessary to the long-term conservation of the species, but the existing plans were too early in development and implementation to influence their opinion at this time.

United States Federal Laws and Regulations

The greater sage-grouse is not covered or managed under the provisions of the Migratory Bird Treaty Act (16 U.S.C. 703–712). Federal agencies in the United States are responsible for managing 66 percent of the sagebrush landscape (Connelly *et al.* 2004). The Federal agencies with the most sagebrush are the Bureau of Land Management (BLM), an agency of the Department of the Interior, and the U. S. Forest Service (USFS), an agency of the Department of Agriculture. The U.S. Department of Defense, U.S. Department of Energy, and several agencies in the Department of the Interior also have responsibility for lands and/or decisions that involve habitat of the greater sage-grouse.

The BLM estimates that about 46 percent of greater sage-grouse habitat is on BLM-administered land, with approximately 78.3 million acres of BLM-administered lands falling within the range currently occupied by the greater sage-grouse (BLM 2004a). The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary federal law governing most land uses on BLM-administered lands. Section 102(a)(8) of FLPMA specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed: ''The Congress declares it is the policy of the United States that the public lands be managed in a manner that * * * will provide food and habitat for fish and wildlife and domestic animals. * * *'' Regulations pursuant to FLPMA and the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) that address wildlife habitat protection on BLM-administered land include 43 CFR 3162.3–1 and 43 CFR 3162.5–1; 43 CFR 4120 *et seq.*; 43 CFR 4180 *et seq.*

BLM policy and guidance for species of concern occurring on BLM managed land is addressed under BLM Manual 6840—Special Status Species Management (BLM 2001). In 1998 the greater sage-grouse was State-listed as a threatened species in Washington (Stinson *et al.* 2004), and therefore BLM decisions and actions involving greater sage-grouse habitat on BLM-administered lands in Washington have been subject to the policy guidance in BLM Manual 6840 since then. The BLM has designated the greater sage-grouse a sensitive species across all 11 States in the sage-grouse range. BLM's policy regarding sensitive species is that ''The protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species'' (BLM 2001). The BLM policy regarding candidate species includes: implementation of management plans for conserving the species and its habitats; ensuring actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed; ensuring the species are considered in land use plans; developing and/or participating in management plans and species and habitat assessments; and monitoring the species for evaluating of management objectives (BLM 2001).

Land use plans are the basis for all actions and authorizations involving BLM-administered lands and resources: they establish allowable resource uses, resource condition goals and objectives to be attained; program constraints and general management practices needed to attain the goals and objectives; general implementation sequences; and intervals and standards for monitoring and evaluating the plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601.0–5(k)). According to a draft Report provided to the Service by BLM, there are 98 land use plans that involve sage-grouse habitat (BLM 2004a). Based on information provided by BLM field offices, 13 of the 98 plans do not contain any direction that specifically pertains to the greater sage-grouse or its habitat (BLM 2004a). The other 85 plans contain standards and/or prescriptions that ''contribute positively to on-the-ground sage-grouse habitat conservation'' and/or ''contribute positively to on-the-ground sagebrush conservation.'' Examples include fencing areas with value to sage-grouse, and applying distance stipulations around leks (BLM 2004a). However, the BLM does not provide or describe the criteria or process used to determine that the standards and/or prescriptions listed in this report contribute positively to sage-grouse habitat or sagebrush conservation (BLM 2004a).

Land use plans provide a framework and programmatic guidance for implementation (activity) plans, which are site-specific plans written to implement decisions made in a land use plan. Examples include allotment management plans (AMPs) that address livestock grazing, oil and gas field development, travel management, and wildlife habitat management. Implementation/activity plan decisions normally require additional planning and NEPA analysis. With regard to special status species, BLM Manual

6840.22A states: ''Implementation-level planning should consider all site-specific methods and procedures which are needed to bring the species and their habitats to the condition under which the provisions of the ESA are not necessary, current listings under special status species categories are no longer necessary, and future listings under special status species categories would not be necessary.''

On November 16, 2004, BLM Instruction Memorandum (IM) No. 2005–024 transmitted information to all BLM field and Washington Office officials regarding the development of a National BLM Sage-grouse Habitat Conservation Strategy for BLM-administered lands. This strategy is described as the framework to address the conservation of sage-grouse and risk to sagebrush habitats on lands and activities administered by the BLM. It commits the BLM to work with States and local interests on this issue. The IM instructed BLM State Directors to develop a process and schedule to update deficient land use plans to adequately address sage-grouse and sagebrush conservation needs no later than April 1, 2005. Implementation plans are also covered by this IM.

BLM has the regulatory authority for oil and gas leasing, as provided at 43 CFR 3100 *et seq.*, and they are authorized to require stipulations as a condition of issuing a lease. Program-specific guidance for fluid minerals (which include oil and gas) in the BLM planning handbook specifies that land use plan decisions will identify restrictions on areas subject to leasing, including closures, as well as lease stipulations (BLM 2000). This handbook further also specifies that all stipulations must have waiver, exception, or modification criteria documented in the plan, and notes that the least restrictive constraint to meet the resource protection objective should be used (BLM 2000). BLM states that some ''older'' oil and gas leases do not have stipulations that address sage-grouse (BLM 2004a), but we do not have information on how many of these leases are in this category. BLM has the regulatory authority to condition the application for drill use authorizations, conducted under a lease, that does not contain sage-grouse conservation stipulations (BLM 2004a). Also, some oil and gas leases have a 200-meter (0.12-mile) stipulation, which allows movement of the drilling area by that distance (BLM 2004a). BLM states that many of their field offices work with the operators to move a proposed drilling site farther or justify such a move through the site-specific NEPA process (BLM 2004a).

In developing stipulations for oil and gas the BLM considers the best available scientific information, including, but not limited to, the sage-grouse population and habitat management guidelines developed by the Western States Sage and Columbian Sharp-tailed Grouse Technical Committee under the direction of the Western Association of Fish and Wildlife Agencies, as published by Connelly *et al.* (2000a) (BLM 2004a). BLM states that a site-specific evaluation decision is required to implement conservation measures given the complexity and variability of the habitat and other variables (BLM 2004a).

The oil and gas leasing regulations authorize BLM to modify or waive lease terms and stipulations if the authorized officer determines that the factors leading to inclusion of the term or stipulation have changed sufficiently to no longer justify protection, or if proposed operations would not cause unacceptable impacts (43 CFR 3101.1–4). The Service does not have information on the type or number, or the basis for, exceptions, modifications, or waivers of stipulations pertaining to the greater sage-grouse and/or their habitat that have been granted by BLM.

The Energy Policy and Conservation Act (EPCA) of 2000 included provisions requiring the Secretary of the Interior to conduct a scientific inventory of all onshore Federal lands to identify oil and gas resources underlying these lands and the nature and extent of any restrictions or impediments to the development of such resources (U.S.C. Title 42, Chapter 77, section 6217(a)). On May 18, 2001, the President signed Executive Order 13212—Actions to Expedite Energy-Related Projects (E.O. 13212) (66 FR 28357, May 22, 2001), which states that it is the Administration's policy that the executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. The Executive Order specifies that this includes expediting review of permits or taking other actions as necessary to accelerate the completion of projects, while maintaining safety, public health, and environmental protections. The BLM has responded to these declarations with the issuance of several IM to their staff that may influence sage-grouse conservation during these actions, including providing guidance for land use planning relative to oil and gas operations and focusing efforts for resource recovery in seven areas, six of which are within occupied greater sage-grouse habitats ((IM 2003–137, April 3, 2003; IM No. 2003–233, July 28, 2003).

As discussed previously, BLM land use plans and implementation plans may include BMPs, which are defined as ''a suite of techniques that guide, or may be applied to, management actions to aid in achieving desired outcomes. IM 2004–194 (June 22, 2004) addresses the integration of Best Management Practices (BMPs) into Application for Permit to Drill (APD) approvals and associated rights-of-way. This IM states that BLM Field Offices ''shall incorporate appropriate BMPs into proposed APDs and associated on and off-lease rights-of-way approvals after appropriate NEPA evaluation. The wildlife management criteria are broadly stated. For example, one BMP is: ''To minimize habitat loss and fragmentation, re-establish as much habitat as possible by maximizing the area reclaimed during well production operations. In many cases, this ''interim'' reclamation can cover nearly the entire site. It is OK to set up well workover operations or park on the restored vegetation. Just repair the damage when you are done.'' Another example is: ''Consider drilling multiple wells from a single well pad to reduce the footprint of oil and gas activity on wildlife habitat.'' The Service has no information regarding the results of BLM monitoring and evaluation of the effectiveness of these or similar BMPs that may have been adopted previously in BLM planning documents or as part of other, more site-specific planning decisions.

BLM regulatory authority for grazing management is provided at 43 CFR part 4100 (Regulations on Grazing Administration Exclusive of Alaska). Livestock grazing permits and leases contain terms and conditions determined by BLM to be appropriate to achieve management and resource condition objectives on the public lands and other lands administered by the BLM, and to ensure that habitats are, or are making significant progress toward being, restored or maintained for BLM special status species (43 CFR 4180.1(d)). Grazing practices and activities subject to standards and guidelines include the development of grazing related portions of implementation/activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction, and development of water.

The State or regional standards for grazing administration must address habitat for endangered, threatened, proposed, candidate, or special status species, and habitat quality for native plant and animal populations and communities (43 CFR 4180.2(d)(4) and (5). The guidelines must address restoring, maintaining or enhancing habitats of BLM special status species to promote their conservation, and maintaining or promoting the physical and biological conditions to sustain native populations and communities (43 CFR 4180.2(e)(9) and (10). BLM is required to take appropriate action not later than the start of the next grazing year upon determining that existing grazing practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines (43 CFR 4180.2(c)). BLM agreed to work with their Resource Advisory Councils to expand the rangeland health standards required under 43 CFR part 4180 so that there are public land health standards relevant to all ecosystems, not just rangelands, and that they apply to all BLM actions, not just livestock grazing (BLM Manual 4180.06.A). All States within the range of greater sage-grouse have a resource advisory council, except Wyoming.

The BLM states that 89 percent of lands are meeting standards, or are not meeting standards but appropriate actions have been implemented to ensure significant progress towards the standards (BLM 2004a). The remaining 11 percent are not meeting standards due to either livestock grazing or other causes. We have no information on how these rangeland health categories affect sage-grouse habitats.

On December 8, 2003, BLM issued a proposed rule (68 FR 68452) that would modify the current grazing management regulation in two ways: (1) It provides that assessment and monitoring standards are needed to support a determination that livestock grazing significantly contributes to not meeting a standard or conforming with a guideline; and (2) It requires BLM to analyze, formulate and propose appropriate action within 24 months of the determination (rather than ''before the start of the next grazing year''). This proposed rule has not been finalized.

The Forest Service (USFS) has management authority for 8 percent of the sagebrush habitat in the United States (Connelly *et al.* 2004). Management of Federal activities on National Forest System lands is guided principally by the National Forest Management Act (NFMA) (16 U.S.C. 1600–1614, August 17, 1974, as amended 1976, 1978, 1980, 1981, 1983, 1985, 1988 and 1990). NFMA specifies that all National Forests must have a land and resource management plan (LRMP) (16 U.S.C. 1600) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. NFMA requires the USFS to incorporate standards and guidelines into LRMPs (16 U.S.C. 1600). This has historically been done through a NEPA process, including provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The Forest Service planning process is similar to BLM's.

The 1982 NFMA implementing regulation for land and resource management planning (1982 rule, 36 CFR part 219), under which all existing forest plans were prepared, requires the Forest Service to manage habitat to maintain viable populations of existing native vertebrate species on National Forest System lands (1982 rule, 36 CFR 219.19). Management indicator species were used to estimate the effects of each alternative on fish and wildlife populations, and were selected because their population changes are believed to reflect the effects of management activities (1982 rule, 36 CFR 219.19(a)). The regulation requires that during the planning process, each alternative considered needed to establish objectives for the maintenance and improvement of habitat for management indicator species, to the degree consistent with overall multiple use objectives of the alternative (1982 rule, 36 CFR 219.19(a)). Fourteen National Forests identified greater sage-grouse as a Management Indicator Species, including Beaverhead National Forest, Little Missouri National Grassland, Thunder Basin National Grassland, Buffalo Gap National Grassland, White River National Forest, Ashley National Forest, Boise National Forest, Caribou National Forest, Curlew National Grassland, Humboldt National Forest, Toiyabe National Forest, Sawtooth National Forest, Inyo National Forest, and Modoc National Forest.

Revisions to the planning regulations adopted on November 9, 2000 (65 FR 67514) did not retain the management indicator species requirement, but rather stated: ''Plan decisions affecting species diversity must provide for ecological conditions that the responsible official determines provide a high likelihood that those conditions are capable of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area * * *'' (65 FR 67514). Further revisions have been proposed (67 FR 72770; December 6, 2002) but a final rule has not been promulgated. Until such time a rule is completed, officials responsible for planning decisions may use the management indicator provisions.

As part of our status review process, the members of the expert panel and the Service's decision support team of senior Service biologists and managers were provided with information regarding NFMA and related regulations, including the 1982 and 2000 planning regulations and the recent interpretive rule, along with information explaining that the Forest Service had proposed, but not promulgated, changes to the 2000 regulation. Since the meeting by the expert panel and the Service's decision support team, the Forest Service has promulgated a final planning rule at 36 CFR 219 and eliminated the 2000 planning rule. The new Forest Service planning regulation became effective when it was published in the **Federal Register** on January 5, 2005 (70 FR 1023).

As described by the Forest Service, plans developed under the new regulation will be more strategic and less prescriptive in nature than those developed under the 1982 planning rule (which has guided the development of all forest plans to date). For instance, plans previously might have included standards for a buffer for activities near the nest sites of birds sensitive to disturbance during nesting, whereas under the new rule a desired condition description and guidelines will be provided, rather than a set of prescriptive standards that would apply to projects. Planning and decisions for projects and activities will address site-specific conditions and identify appropriate conservation measures to take for each project or activity.

Under the new rule, the purpose of forest plans is to establish goals and to set forth guidance to follow in pursuit of those goals. The rule calls for five components of plans: desired conditions, objectives, guidelines, suitability of areas, and special areas (36 CFR 219.7(a)(2)). The rule states that these components are intended to provide general guidance and goals or other information to be considered in subsequent project and activity decisions, and that none of these components are commitments or final decisions approving projects and activities (36 CFR 219.7(a)(2)). Approval of a plan, plan amendment, or plan revision comprised of these five components may be categorically

excluded from NEPA documentation (36 219.4(b)). In a separate **Federal Register** publication issued in conjunction with the new planning rule, the Forest Service announced a proposed revision to one of its handbooks (FSH 1909.15, Chapter 30) to include final decisions on proposals to develop, amend, or revise land management plans as one of the categories of actions that will not result in significant impacts on the human environment and which are therefore exempt from requirements to prepare further NEPA documentation (70 FR 1062; January 5, 2005).

The new rule requires that an environmental management system (EMS) be established for each unit of the National Forest System and the EMS may be established independently of the planning process (36 CFR 219.5). Plan development, amendment, or revision must be completed in accordance with direction at 36 CFR 219.14 and with the EMS. The EMS must conform to the standard developed by the International Organization for Standardization (ISO), specifically ISO 14001: Environmental Management Systems—Specification With Guidance for Use (36 CFR 219.5)(b)).

The new rule requires maintenance of three types of evaluation reports: (1) Comprehensive evaluation of current social, economic, and ecological conditions and trends that contribute to sustainability (to be updated at least every five years); (2) evaluation for a plan amendment, which must analyze issues relevant to the purposes of the amendment; and (3) annual evaluation of monitoring information (36 CFR 191.6). The rule specifies that the plan must describe the monitoring program for the plan area, and describes general categories of items to be provided for in the monitoring program (*e.g.* determining the effects of various resource management activities on the productivity of the land) (36 CFR 219.6(b)). The new rule also includes a provision that the responsible official must take into account the best available science (36 CFR 219.11) in the planning process; the official also will consider public input, competing use demands, budget projects and other factors as appropriate.

The new planning regulation does not include provisions regarding habitat for species viability. Rather, with regard to ecological sustainability, plans are to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plants and animal species in the plan area (36 CFR 219.10 (b)). Ecosystem diversity is described as being the primary means by which a plan contributes to sustaining ecological systems (36 CFR 219.10 (b)), and the Forest Service states that this focus is expected to conserve most species. If the Responsible Official determines that provisions in plan components, beyond those addressing ecosystem diversity, are needed ''to provide appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest, then the plan must include additional provisions for these species, consistent with the limits of agency authorities, the capability of the plan area, and overall multiple use objectives'' (36 CFR 219.10(b)(2)). The rule defines species-of-concern as ''Species for which the Responsible Official determines that management actions may be necessary to prevent listing under the Endangered Species Act'' and defines species-interest as ''Species for which the Responsible Official determines that management actions may be necessary or desirable to achieve ecological or other multiple use objectives'' (36 CFR 219.16).

The new rule does not include Management Indicator Species. It specifies that for national forest system units with plans developed, amended, or revised using the 1982 planning regulations, compliance with any obligations relating to management indicator species may be achieved by considered data and analysis relating to habitat (as compared to the 1982 regulation that required population trend data) unless the plan specifically requires population monitoring or population surveys for the species, and also specifies that site-specific monitoring or survey of a proposed project or activity area (pertaining to such species) is not required in relation to such species (36 CFR 219.14(f)).

For each unit of the National Forest System, the transition period for the new rule is three years or at the unit's establishment of an EMS, whichever comes first (36 CFR 219.14). A document approving a plan developed, revised, or amended using the new regulation must include a description of the effects of the plan on existing, permits, contracts, or other instruments implementing approved projects and activities (36 219.8(a)). If not expressly excepted, approved projects and activities must be consistent with the applicable plan components, subject to provisions in 36 219.8(e) that provide options for addressing a use, project or activity that is not consistent with the applicable plan.

The supplementary information provided with the new rule states that the Forest Service is developing planning directives (*i.e.*, manuals and handbooks) regarding the use of this new rule, and that proposed changes in the directives will be available for public comment as soon as possible after adoption of the final rule.

The greater sage-grouse is designated as a USFS sensitive species in Regions 1 (Northern Region—northern ID, MT, ND, and northern SD), 2 (Rocky Mountain Region—CO, WY), 4 (Intermountain Region—southern ID, southwestern WY, UT, NV, eastern CA), 5 (Pacific Southwest Region—CA), and 6 (Pacific Northwest Region—OR, WA) (USDA Forest Service, in litt. 2004). These regions encompass the entire range of the species in the United States (USDA Forest Service, in litt. 2004).

Many forests within the range of sage-grouse provide important seasonal habitats for the species, particularly the Thunder Basin National Grassland and the Humboldt-Toiyabe National Forest (USDA Forest Service, in litt. 2004). While the 1982 planning regulation, including its provision for population viability, was used in the development of the existing Forest Plans, no information has been provided to the Service regarding specific implementation of the above regulations and policies for the greater sage-grouse. Also, we have no information regarding the results of sage-grouse population monitoring for those National Forests that identified it as a management indicator species, and thus were subject to the requirement in the 1982 rule to monitor population trends and determine relationships to habitat changes.

Of the 34 National Forests within greater sage-grouse range, approximately half do not specifically address sage-grouse in their Forest Plans (USDA Forest Service, in litt. 2004). Reasons for this include lack of species occurrence, incidental use of the National Forest System lands by sage-grouse, or the Forest Plan pre-dated concern for sage-grouse conservation (pre-2000; USDA Forest Service, in litt. 2004). Direction for the conservation of sage-grouse and their habitats (at least indirectly) was provided in 15 plans relative to minerals management, 18 plans for fire and fuels management, 24 for livestock grazing actions, 10 for realty actions, 15 for recreation activities, 8 for recreation, and 20 for vegetation management (USDA Forest Service, in litt. 2004). The effectiveness of these efforts for sage-grouse and their habitats was not reported to us by the USFS (USDA Forest Service, in litt. 2004).

The USFS incorporates conservation measures for sage-grouse protection at the project level through site-specific

NEPA analyses, using the Western Association of Fish and Wildlife Agencies Sage-grouse management guidelines (Connelly *et al.* 2000a) as a reference (USDA Forest Service, in litt. 2004). According to USFS, if a specific project location does not meet these guidelines, management use standards are developed and incorporated into the design of the project to achieve these conditions (USDA Forest Service, in litt. 2004). Temporal and seasonal restrictions can also be implemented to protect sage-grouse resources.

Other Federal agencies in the U.S. Department of Defense, U.S. Department of Energy, and the U.S. Department of Interior (including the Bureau of Indian Affairs, Fish and Wildlife Service, and National Park Service) are responsible for managing less than 5 percent of sagebrush lands within the United States (Connelly *et al.* 2004). The National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3 and 4) states that the NPS will administer areas under their jurisdiction ''* * * by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historical objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

The National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee) provides guidelines and directives for administration and management of all areas in the National Wildlife Refuge system. This includes wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas. Relatively few units within the Refuge system have habitat for the greater sage-grouse. Refuges are managed for species conservation, consistent with direction in the National Wildlife Refuge System Administration Act, as amended, and related Service polices and guidance.

The Department of the Army has developed Integrated Natural Resources Management Plans for their facilities within sage-grouse habitats. These plans ''reflect the mutual agreement of the facility, the Fish and Wildlife Service and the appropriate State fish and wildlife agency on the conservation, protection and management of fish and wildlife resources'' (Department of the Army, in litt. 2004). Six Army facilities have confirmed sage-grouse presence, and integrated plans have been developed for all. While some agencies have developed site-specific plans for conserving sage-grouse habitats on their lands (*i.e.*, Yakima Training Center, Seedskadee National Wildlife Refuge), we do not have monitoring data regarding the effectiveness of these management actions.

In 1992, we entered into a voluntary Conservation Agreement with the Army and the WADFW for sage-grouse occurring at the Yakima Training Center (66 FR 22984) in Washington. The Conservation Agreement expired April 30, 2000 (66 FR 22984). Efforts to update and implement a revised Conservation Agreement for sage-grouse throughout Washington are ongoing (66 FR 22984). In our 2003 Candidate Notice of Review we concluded that the Army is implementing conservation measures and considerably less-than-planned training activities in Yakima and Kittitas Counties, the location of the sage-grouse that are part of the Columbia Basin DPS of the greater sage-grouse (69 FR 24875).

The Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture assists farmers, ranchers, and other private landowners in reducing threats to sage-grouse habitat by providing technical assistance and financial resources to support management and habitat restoration efforts; helping farmers and ranchers maintain and improve habitat as part of larger management efforts; and developing technical information to assist NRCS field staff with sage-grouse considerations when working with private landowners. The United States Congress recently appropriated $5 million for NRCS to use in 2005 to fund sage-grouse conservation efforts on public and private lands across the range of the greater sage-grouse (PL 108–447). One example of these conservation efforts is found in Douglas County, Washington, the site of the northern subpopulation of the Columbia Basin DPS. Large areas of privately-owned lands are currently withdrawn from crop production and planted to native and non-native cover under the NRCS' Conservation Reserve Program (CRP) (69 FR 24875).

Executive Order 13112 on Invasive Species (64 FR 6183) was signed on February 3, 1999. It seeks to prevent the introduction of invasive species and provide for their control and minimize their impacts through better coordination of federal agency efforts under a National Invasive Species Management Plan to be developed by an interagency Invasive Species Council. The Order directs all federal agencies to address invasive species concerns as well as refrain from actions likely to increase invasive species problems (E.O. 13112).

Executive Order 13112 requires the National Invasive Species Council (Council) to produce a National Management Plan (NMP) for Invasive Species every two years (E.O. 13112). In January 2001, the Council released the first NMP, which serves as a blueprint for all federal action on invasive species. It provides goals and objectives for invasive species management, research needs, and measures to minimize the risk of species introductions. Although individual States have regulations regarding invasive species, we were unable to determine if these regulations will affect sage-grouse habitats.

Canadian Federal and Provincial Laws and Regulations

Greater sage-grouse are cooperatively managed by Provincial and Federal governments in Canada. The species is afforded Federal legal protection under schedule 1 of the Species at Risk Act (SARA; Canada Gazette, Part III, Chapter 29, Vol. 25, No. 3, 2002). Passed in 2002, the Species at Risk Act is similar to the Endangered Species Act and allows for habitat regulations to protect sage-grouse (Aldridge and Brigham 2003). The purpose of the SARA is to prevent the extinction or extirpation of any indigenous Canadian wildlife species, subspecies or distinct population segment. SARA also provides for the recovery of endangered or threatened wildlife and encourages the management of other species to prevent them from becoming species at risk (Connelly *et al.* 2004).

Greater sage-grouse are classified as resident wildlife by the Provinces (Connelly *et al.* 2004). The species is listed as endangered at the Provincial level in Alberta and Saskatchewan, and neither Province allows harvest (Aldridge and Brigham 2003; Connelly *et al.* 2004). Alberta manages greater sage-grouse under the statutory authority of Chapter W–10 of its Wildlife Act (Revised Statutes of Alberta (RSA) 2000). Individual birds are protected in Alberta, but their habitat is not. The Provincial laws also provide for the development of recovery strategies and plans (Connelly *et al.* 2004). Alberta has developed voluntary guidelines to protect leks (Aldridge and Brigham 2003). Provincial laws in Saskatchewan prevent sage-grouse habitat from being sold or from having native vegetation cultivated (Aldridge and Brigham 2003). The Saskatchewan Wildlife Act provides protection for sage-grouse nests and lek sites by

providing spatial and temporal restrictions. No developments are permitted within 500 m (550 yards) of leks and no construction is allowed within 1,000 m (1,100 yards) of leks between March 15 and May 15 (Aldridge and Brigham 2003).

Summary of Factor D

Various regulatory mechanisms that guide the protection and conservation of the greater sage-grouse are in place. The members of the expert panel and the Service's decision support team were provided with more detailed information than we have summarized above regarding regulatory mechanisms pertaining to the greater sage-grouse. Based on the best scientific and commercial data available we have concluded that existing regulatory mechanisms do not endanger or threaten the greater sage-grouse throughout all or a significant portion of its range. Based on the current status of the greater sage-grouse and the fact that the lands administered by the Forest Service comprise a relatively small percentage of sagebrush habitat (approximately 8 percent) in the United States, the new Forest Planning regulation does not result in a change in our conclusion regarding the adequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Pesticides

Few studies have examined the effects of pesticides to sage-grouse, but at least one has documented direct mortality of greater sage-grouse as a result of ingestion of alfalfa sprayed with organophosphorus insecticides (Blus *et al.* 1989, Blus and Connelly 1998). In this case, a field of alfalfa was sprayed with dimethoate when approximately 200 sage-grouse were present; 63 of these sage-grouse were later found dead, presumably as a result of pesticide exposure (Blus *et al.* 1989, Blus and Connelly 1998). A comparison of applied levels of herbicides with toxicity studies of grouse, chickens, and other gamebirds (Carr 1968, as cited in Call and Maser 1985) concluded that herbicides applied at recommended rates should not result in sage-grouse poisonings.

Game birds that ingested sub-lethal levels of pesticides have been observed exhibiting abnormal behavior that may lead to a greater risk of predation (Dahlen and Haugen 1954, McEwen and Brown 1966, Blus *et al.* 1989). McEwen and Brown (1966) reported that wild sharp-tailed grouse poisoned by malathion and dieldrin exhibited depression, dullness, slowed reactions, irregular flight, and uncoordinated walking. Although no research has explicitly studied the indirect levels of mortality from sub-lethal doses of pesticides (*e.g.*, predation of impaired birds), it has been assumed to be the reason for mortality among some study birds (McEwen and Brown 1966, Blus *et al.* 1989, Connelly and Blus 1991). Both Post (1951) and Blus *et al* (1989) located depredated sage-grouse carcasses in areas that had been treated with insecticides. Exposure to these insecticides may have predisposed sage-grouse to predation. Sage-grouse mortalities were also documented in a study where they were exposed to strychnine bait type used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999).

A reduction in insect population levels resulting from insecticide application can potentially affect nesting sage-grouse females and chicks (Willis *et al.* 1993, Schroeder *et al.* 1999), although we could find no information on this specific issue for the greater sage-grouse. Eng (1952) noted that after a pesticide was sprayed to reduce grasshoppers, bird population levels decreased by 50 to 100 percent depending upon which chemical was used. He further stated that it appeared that nestling development was adversely affected due to the reduction in grasshoppers. Potts (1986 in Connelly and Blus 1991) determined that reduced food supply resulting from the use of pesticides ultimately resulted in high starvation rates of partridge chicks. In a similar study on partridges, Rands (1985) found that pesticide application adversely affected brood size and chick survival by reducing chick food supplies.

Three approved insecticides, carbarayl, diflubenzuron, and malathion, are applied across the extant range of sage-grouse as part of implementation of the Rangeland Grasshopper and Mormon Cricket Suppression Control Program, under the direction of the Animal and Plant Health Inspection Service (APHIS) (APHIS 2004). Carbaryl is applied as bait, while the others are sprayed. Application rates are in compliance with U.S. Environmental Protection Agency regulations. APHIS has general guidelines for buffer zones around sensitive species habitats. These pesticides are applied wherever grasshopper and Mormon cricket control are requested by private landowners (APHIS 2004). We were unable to find any information regarding the effects these pesticide applications may have on sage-grouse.

Herbicide applications can kill sagebrush and forbs important as food sources for sage-grouse (Carr 1968 as cited in Call and Maser 1985). The greatest impact resulting from a reduction of either forbs or insect populations is for nesting females and chicks due to the loss of potential protein sources that are critical for successful egg production and chick nutrition (Schroeder *et al.* 1999; Johnson and Boyce 1991).

In summary, pesticides can result in direct mortality of individuals, and can also reduce the availability of food sources, which in turn could contribute to mortality of sage-grouse. Despite these potential effects we could find no information to indicate that the use of pesticides, at current levels, negatively affects greater sage-grouse populations (*see also* Schroeder *et al.* 1999), and many of the pesticides that have been shown to have an effect have been banned in the U.S. for more than 20 years.

Contaminants

Across the range of the greater sage-grouse exposure to various types of environmental contaminants either occur, or may potentially occur, as a result of a variety of human activities, including agricultural and rangeland management practices, mining, energy development and pipeline operations, nuclear energy production and research, and transportation of materials along highways and railroads. Many of these potential exposures and their effects have been discussed above. In addition, numerous gas and oil pipelines occur across the range of the species. Exposure to oil or gas from spills or leaks could impact sage-grouse and cause mortalities or morbidity. Similarly, given the extensive network of highways and railroad lines that occur throughout the range of the greater sage-grouse there is some potential for exposure to contaminants resulting from hazardous materials spills or leaks along these transportation corridors. However these types of spills occur infrequently in only small portions of sage-grouse range and we could not locate any documented occurrences of impacts to sage-grouse from them.

There are no nuclear power plants within the area of current distribution of the greater sage-grouse and there is only one that occurs in range formerly occupied by the species (Nuclear Energy Institute Web page *http://www.nei.org* 2004). Sage-grouse do occur on the U.S. Department of Energy's Idaho National Engineering Laboratory in eastern Idaho (Connelly and Markham 1983). Exposure of sage-grouse to

radionuclides (radioactive atoms) has been documented at this site (Connelly and Markham 1983). Although researchers noted the presence of varying levels of radionuclides in greater sage-grouse at this site they did not report any harmful effects to the population (Connelly and Markham 1983).

Indirect effects of contaminants on greater sage-grouse include loss of habitat components, such as food or cover. The indirect effects of contaminants from agriculture, mining operations, energy development and distribution, or hazardous waste spills along roads and railroad lines, can result in the killing of plants or insects that provide food for sage-grouse. Although the expert panel identified contaminants in the list of extinction risk factors for sage-grouse, it received the lowest ranking of relative importance.

Recreational Activities

Studies have determined that non-consumptive recreational activities can degrade wildlife resources, water, and the land by distributing refuse, disturbing and displacing wildlife, increasing animal mortality, and simplifying plant communities (Boyle and Samson 1985). Sage-grouse response to disturbance may be influenced by the type of activity, recreationist behavior, predictability of activity, frequency and magnitude, activity timing, and activity location (Knight and Cole 1995). Examples of recreational activities in sage-grouse habitats include hiking, camping, pets, and off-highway vehicle (OHV) use. Although we have not located any published literature concerning recreational effects on sage-grouse, they could disturb sage-grouse on leks and in nesting areas. Baydack and Hein (1987) reported displacement of male sharp-tailed grouse at leks from human presence resulting in loss of reproductive opportunity during the disturbance period. Female sharp-tailed grouse were observed at undisturbed leks while absent from disturbed leks during the same time period (Baydack and Hein 1987). Disturbance of incubating female sage-grouse could cause displacement from nests, increased predator risk, or loss of nests. Disruption of sage-grouse during vulnerable periods at leks, or during nesting or early brood rearing, however, could affect reproduction or survival (Baydack and Hein 1987). However, we were unable to find any published information regarding effects to sage-grouse as a result of these factors. The presence of pets in proximity to sage-grouse can result in sage-grouse mortality or disturbance, and increases in garbage from human recreators can attract sage-grouse predators and help maintain their numbers at increased levels.

Indirect effects to sage-grouse from recreational activities include impacts to vegetation and soils, and facilitating the spread of invasive species. Payne *et al.* (1983) studied OHV impacts to rangelands in Montana, and found long-term (2 years) reductions in sagebrush shrub canopy cover as the result of repeated trips in the area. Increased sediment production and decreased soil infiltration rates were observed after disturbance by motorcycles and four-wheel drive trucks on two desert soils in southern Nevada (Eckert *et al.* 1979). However, we could find no information that quantified impacts to the sagebrush community or to sage-grouse populations.

We are unaware of scientific reports documenting direct mortality of greater sage-grouse through collision with off-road vehicles. Similarly, we did not locate any scientific information documenting instances where snow compaction as a result of snowmobile use precluded greater sage-grouse use, or affected their survival in wintering areas. Off-road vehicle or snowmobile use in winter areas may increase stress on birds and displace sage-grouse to less optimal habitats. However, there is no empirical evidence available documenting these effects on sage-grouse, nor could we find any scientific data supporting the possibility that stress from vehicles during winter is limiting greater sage-grouse populations.

The expert panel identified human activities within greater sage-grouse habitats as an extinction risk factor. However, this factor ranked relatively low.

Drought/Climate Change

Drought is a common occurrence throughout the range of the greater sage-grouse (Braun 1998). Drought reduces vegetation cover (Milton *et al.* 1994; Connelly *et al.* 2004), potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity. Drought can also exacerbate other natural events, such as defoliation of sagebrush by insects. Approximately 2,544 km^2 (982 mi^2) of sagebrush shrublands died in Utah in 2003 as a result of drought and infestations with the *Aroga* (webworm) moth (Connelly *et al.* 2004). Sage-grouse are affected by drought through the potential loss of vegetative habitat components and reduced insect production (Connelly and Braun 1997). These habitat component losses can result in declining sage-grouse populations due to increased nest predation and early brood mortality associated with decreased nest cover and food availability (Braun 1998; Schroeder *et al.* 1999).

Sage-grouse populations declined during the 1930s period of drought (Patterson 1952; Willis *et al.* 1993; Braun 1998). Drought conditions in the late 1980s and early 1990s also coincided with a period when sage-grouse populations were at historically low levels (Connelly and Braun 1997). Although drought has been a consistent and natural part of the sagebrush-steppe ecosystem, drought impacts on the greater sage-grouse can be exacerbated when combined with other habitat impacts that reduce cover and food (Braun 1998). Many studies discuss the effects of decreased insect and forb production to sage-grouse, but we could find no research specifically addressing drought effects on sage-grouse populations.

Short-term climatic cycles over timescales of decades can affect plant community dynamics, potentially resulting in a shift in successional stage (Connelly *et al.* 2004). Long-term changes in climate and atmospheric conditions over timescales of centuries will shift competitive advantage among individual plant species (Connelly *et al.* 2004). Environmental changes resulting from climate change could facilitate invasion and establishment of invasive species or exacerbate the fire regime, thereby possibly accelerating the loss of sagebrush habitats (Connelly *et al.* 2004). Increases in the expansion of pinyon and juniper woodlands in the Great Basin may have resulted from a combination of poor habitat management and climate change (Connelly *et al.* 2004). The potential conversion of habitats as a result of climate change could have long-term effects on sage-grouse populations (Connelly *et al.* 2004). We have no evidence however, that past climate change has directly affected sage-grouse populations.

One expert panelist identified climate change as the primary extinction risk factor for the greater sage-grouse. While the other panelists did not score this factor as highly, most acknowledged that long-term ongoing climate change will result in changes within the sagebrush ecosystem that may be negative for the greater sage-grouse.

Life History Traits Affecting Population Viability

Sage-grouse have comparatively low reproductive rates and high annual survival (Schroeder *et al.* 1999; Connelly *et al.* 2000a), resulting in slower potential or intrinsic population growth rates than typical of other game birds. Therefore, recovery of populations after a decline from any reason may require years. Also, as a consequence of their site fidelity to breeding and brood-rearing habitats, measurable population effects may lag behind, negative habitat impacts that may occur (Wiens and Rotenberry 1985). While these natural history characteristics would not limit sage-grouse populations across large geographic scales under historical conditions of extensive habitat, they may contribute to local population declines when humans alter habitats or mortality rates.

Sage-grouse have one of the most polygamous mating systems observed among birds (Deibert 1995). Asymmetrical mate selection (where only a few of the available members of one sex are selected as mates) should result in reduced effective population sizes (Deibert 1995), meaning the actual amount of genetic material contributed to the next generation is smaller than predicted by the number of individuals present in the population. With only 10 to 15 percent of sage-grouse males breeding each year (Aldridge and Brigham 2003), the genetic diversity of sage-grouse would be predicted to be low. However, in a recent survey of 16 greater sage-grouse populations, only the Columbia Basin population in Washington showed low genetic diversity, likely as a result of long-term population declines, habitat fragmentation, and population isolation (Benedict *et al.* 2003; Oyler-McCance *et al.*, In press). The level of genetic diversity in the remaining range of sage-grouse has generated a great deal of interest in the field of behavioral ecology, specifically sexual selection (Boyce 1990; Deibert 1995). There is some evidence of off-lek copulations in sage-grouse (copulations that occur off the lek by subordinate males), as well as multiple paternity within one clutch (Connelly *et al.* 2004). Dispersal may also contribute to genetic diversity, but little is known about dispersal in sage-grouse (Connelly *et al.* 2004). However, the lek breeding system suggests that population sizes in sage-grouse must be greater than non-lekking birds to maintain long-term genetic diversity.

Aldridge and Brigham (2003) estimated that up to 5,000 individual sage-grouse may be necessary to maintain an effective population size of 500 birds. Their estimate was based on individual male breeding success, variation in reproductive success of males that do breed, and the death rate of juvenile birds. We were unable to find any other published estimates of minimal population sizes necessary to maintain genetic diversity and long-term population sustainability in sage-grouse.

Summary of Factor E

In our 90-day petition finding, we identified several other natural or manmade factors (*i.e.* endocrine disruption, competition with other bird species, and direct mortality from fires and snowmobiles) that might potentially pose a threat to the greater sage-grouse. However, for this analysis, we could find no supporting information to indicate that any of these are endangering or threatening sage-grouse populations.

One expert panelist identified climate change, and resultant habitat changes from invasive species establishment, as the most significant threat factor for the sagebrush ecosystem. However, the imminent threats to this ecosystem were not thought to be sufficient to endanger or threaten the greater sage-grouse within the defined foreseeable future. Thus, based on the best scientific and commercial data available, including input from the expert panel, we have concluded that other natural and manmade factors do not endanger or threaten the sage-grouse throughout all or a significant portion of its range.

Petition Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the three petitions, information available in our files, other published and unpublished information, and comments submitted to us during the public comment period following our 90-day petition finding, and we consulted with recognized experts and other resource agencies. On the basis of the best scientific and commercial information available, we find that the petitioned action to list the greater sage-grouse is not warranted at this time. Although sagebrush habitat continues to be lost and degraded in parts of the greater sage-grouse's range (albeit at a lower rate than historically observed), from what we know of the current range and distribution of the sage-grouse, its numbers are well represented. As a result, we find that the species is not in danger of extinction, nor is it likely to become endangered in the foreseeable future. We are encouraged that sage-grouse and sagebrush conservation efforts will moderate the rate and extent of habitat loss for the species in the future. We strongly encourage the continuation of these efforts.

As described earlier in this document (*see* Status Review Process), the status review was conducted in two stages: (1) A risk analysis stage which consisted of compiling biological information, conducting the PECE analysis of conservation efforts, and conducting a facilitated extinction risk assessment by a panel of experts, and (2) a risk management stage where senior Service biologists and managers evaluated whether or not the greater sage-grouse qualifies as threatened or endangered under the Act.

Prior to estimating the risk of extinction in the risk analysis stage, the expert panel agreed on the 19 most important threats to sage-grouse across its range. To better understand the impact of these threats to the survival of the species, each expert assigned a relative rank to each threat within each of three different geographical distinctions. These included the eastern and western portion of the range of the greater sage-grouse and the whole range of the species (Figure 1). Dividing the range of the species into an eastern and western region for the purposes of the expert panel exercises was intentional to help Service biologists and managers and the expert panelists understand the importance of the various threats to the species at different geographical scales. The relative rankings of the identified threats reflect that some threats are regional in nature while others express themselves across the whole range of the species. Threats that ranked low on a regional and rangewide basis were considered to operate at the local or site-specific level where they occurred.

In reaching these rankings the expert panelists reviewed an initial list of threats that was generated from the synthesis of biological information the Service had prepared, and through a discussion among the panelists held in front of the Service's decision support team, added to that list and modified it before agreeing to a list of the most important threats. Ranking of the relative importance of those threats occurred in two stages. First, each panelist was asked to anonymously rank the 19 threats from most to least significant. After an initial scoring by the experts occurred, the ranks were presented to the expert panel by a facilitator in front of the decision support team and the experts discussed

why they ranked as they did. After this discussion the experts rescored the threats. The threats that moved to the top of the list are, in order, invasive species, infrastructure as related to energy development and urbanization, wildfire, agriculture, grazing, energy development, urbanization, strip/coal mining, weather, and pinyon-juniper expansion.

The threat ranking component of the structured process was important for three reasons: (1) It provided an informed, science based, ranking of the threats to the species, (2) the discussions that occurred in formulating the threat list and the discussions among the experts after their initial scoring played a critical role in helping the Service's decision support team understand the magnitude of a threat and the geographical scale at which a threat operated, and (3) it provided via the threat ranking and the discussion among experts, the foundation for the expert panel to conduct an extinction risk analysis.

The highest ranking threats exert their influence primarily through habitat loss. Thus, our structured analysis process revealed that at this time habitat loss appears to be the most important threat to the greater sage-grouse, a conclusion consistent with the available biological information and our 90-day finding.

It is clear there are various threats to the sagebrush steppe ecosystems upon which the greater sage-grouse depends. However, we are aware of no quantitative projections of extinction risk for the greater sage-grouse in the face of these rangewide, regional and local threats. This information gap is important because the Act's definitions of threatened and endangered are closely tied to risk of extinction. We therefore elicited quantitative estimates of time to extinction from the expert panelists. Besides their own expertise, the panelists prepared for estimating future risk by reading a wide variety of background materials, and they participated in two days of discussions of relevant sage-grouse life history attributes, threats (summarized above), the land ownerships and allocations, the regulatory setting and management challenges currently existing across the landscape, the size and distribution of the major sage-grouse population centers, and state by state indices of population status. After these deliberations, the expert panelists were asked to quantitatively express their beliefs about when the greater sage-grouse might go extinct.

Panelists expressed their beliefs about most likely time to extinction on score sheets where the future was broken down into the following time intervals: 1–20, 21–40, 41–60, 61–80, 81–100, 101–200 and more than 200 years. Panelists expressed biological uncertainty about the most likely time to extinction by spreading 100 points over the various time intervals. The experts were not uniform in their estimates of the most likely time to extinction although five of the seven panelists believed that the sage-grouse would not face extinction for at least 100 years. One panelist, for example, believed the most likely time to extinction is in the time period 61 to 80 years from present, one believed the most likely time is 81 to 100 years from present, 2 panelists believed the most likely time to extinction is in the period 101 to 200 years from present, 1 panelist split points equally between the 101 to 200 year and 200+ year categories, and 2 panelists believed the most likely time to extinction was in the 200+ year category. Most of the panelists, for example spread points over several time intervals, from a period less than 100 years in the future to the greater than 200 years category, expressing individual uncertainty about the most likely time to extinction. On one count the experts performed very uniformly; no points were allocated by any panelist for the two time intervals within 40 years of present.

In their deliberations about the most likely time to extinction, the experts engaged in wide-ranging discussions of future risk which included West Nile virus, management advances in addressing threats, the expectation that there will still be some vast areas of sagebrush habitat at least 100 years in the future, looking into the past to help predict the future, the difficulty of controlling invasive annual plants, the major native perennial grass communities and their resiliency in the eastern versus the western part of the range, the role and geographic extent of infrastructure development, role of population subdivision for population vulnerability, plant community oscillations, climate oscillations, limited role of predators, and the elusiveness of cause-effect relationships for sage-grouse population trends, especially the increases seen in the most recent sampling (1993 to 2003).

After the extinction risk estimate exercise was completed the experts were asked to describe data gaps that, if resolved, could reduce uncertainty in their scores or even change their estimates. This question generated a wide-ranging discussion of uncertainty and data gaps. In some cases research programs were proposed. Areas of uncertainty discussed by the experts included: systematic relationships among various grouse species; underlying mechanisms by which sage-grouse populations respond to habitat changes; how to scale grouse habitat preference up to the level at which federal land is managed; lack of studies across the range limits inferences; effects of invasive plants; application of grazing techniques to favor sagebrush habitat; underutilization of the case study approach for sage-grouse management; future gas and oil development impacts; future advances in horticulture and fire suppression; the role of crested wheatgrass in sagebrush management; and the effectiveness of CRP program. No attempt was made to rank the effects of these and other areas of uncertainty on the estimates of future risk.

This list of data gaps and uncertainties helps explain some of the biological uncertainty that limits our understanding of future risk to the greater sage-grouse. The Service, however, must make its decision about whether this species qualifies as threatened or endangered under the Act based on the best available scientific and commercial data, even if there is uncertainty. To help increase the chances of making an optimal decision about whether or not to list, the decision support team of senior Service biologists and managers (described above—*see* Status Review Process) participated in a structured analysis that included a discussion of the Act's statutory requirements, in particular the Act's definitions of threatened and endangered, and a review of the information from the risk analysis and all other compiled biological information. Finally they participated in an exercise where they compared the information about risk to sage-grouse, including explicit measures of uncertainty, against the statutory requirements of the Act. In this exercise, much like the extinction risk exercise described above, the decision support team was asked to express their beliefs about the optimal status category for the greater sage-grouse. The Act defines endangered and threatened as:

> *Endangered species* means any species in danger of extinction throughout all or a significant portion of its range.
>
> *Threatened species* means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The basic question facing the decision support team was whether the factors influencing the greater sage-grouse and its habitat place it in danger of extinction or whether they are likely to

cause it to become endangered in the foreseeable future. Estimates of extinction risk help address this question; however, neither general classification thresholds nor standardized criteria for establishing species-specific thresholds have yet been adopted for Service use.

The Service decision support team discussed the extinction risk threshold concept generally, and discussed previous Service applications. With regard to the foreseeable future, team members agreed by consensus that given all of the uncertainties, a reasonable timeframe for ''foreseeable future'' for the threatened definition is approximately 30 to 100 years (about 10 greater sage-grouse generations to 2 sagebrush habitat regeneration cycles). The decision support team reflected on the ''significant portion of the range'' term, and discussed previous applications by the Service. The team reviewed the findings of the risk analysis phase and found that while different threats are asserting themselves at different rates in different parts of the range, it is difficult to find major variation in risk over significant portions of the range. Discussions by the expert panel in the risk analysis phase indicated that if the species continues to decline, the most likely scenario would include some combination of losses around the edges of some portions of the range, some localized losses and fragmentation of larger core areas, but these projected losses are geographically unknown at this time and difficult to predict. Thus, in the absence of major geographical variation in projected extinction risk, or any measure of the spatial extent or location of projected future losses, it was decided by consensus that there was not a significant portion of the range in which threats to sage-grouse are greater than range-wide threats.

To help further inform the Service's finding, the decision support team's final exercise assessed their beliefs about what the appropriate petition finding should be: not-warranted, threatened, or endangered. The team had read the compiled background materials, observed the two-day risk assessment discussions of the expert panelists, which included explicit measures of uncertainty, and participated in general and specific discussions about the application of the Act's definitions of the threatened and endangered categories.

None of the decision support team assigned any of their 100 points to the endangered category; however, all decision support team members placed some of their points in the threatened category. The average number of points assigned to the not-warranted and threatened categories were, respectively, 74 (range 50–85) and 26 (range 15–50). The fact that all decision support team members placed some of their points in the threatened category reflects a degree of biological uncertainty associated with making scientific decisions. Nevertheless, the ''not warranted'' finding was based on the best scientific and commercial information available at the time of their recommendation.

The best available scientific and commercial information, as summarized within this finding and in the Conservation Assessment of Greater Sage-Grouse and Sagebrush Habitats prepared by WAFWA, clearly reflect that there are a myriad of changes occurring within the sagebrush ecosystem that can impact sage-grouse. Our structured analysis process not only confirmed that many of these changes are indeed threats to the sage-grouse but it clarified the relative importance of these threats at different geographical scales which is an important factor when making a listing determination of such a widely dispersed species. The results reflect the opinion of the expert panelists that some threats are clearly important across the range of the sage-grouse while others are important on a regional scale.

In determining that the greater sage-grouse does not warrant protection under the Act, the Service biologists and managers who participated in the structured analysis process acknowledged that there are real threats to the sage-grouse and its habitat. However, in formulating their recommendation, these biologists and managers noted that there is uncertainty in how these threats will impact the grouse in the future and that there were reasons to be encouraged by current assessments of grouse population status, trends and distribution.

The higher ranking threats, while rangewide and regional in scale, are to a large degree prospective in nature (*e.g.*, invasive species, infrastructure, wildfire, oil and gas development and conifer invasion). Neither the Service nor the expert panelists could predict how these threats will develop over time or interact with each other or with different less important threats to accelerate habitat loss or other impacts to the grouse. This uncertainty was explicitly noted by several of the Service biologists and managers as part of the reason for a not-warranted recommendation. The Act requires the Service to make a decision based on what is known at the time of listing. However, most Service biologists and managers on the decision support team also noted the future health of both the sagebrush system and the sage-grouse would depend on how the threats are expressed and how managers responded to them in the next 5 to 20 years. This uncertainty about the future impact of the threats to sage-grouse may also be reflected in why some experts projected sage-grouse extinction risk at 60 years while others felt that beyond 200 years was more realistic.

It is clear that the number of greater sage-grouse rangewide has declined from historically high levels, with well documented declines between 1960 and 1985. However, the most recent data reflect that overall declines have slowed, stabilized or populations have increased. These data and the fact that 92% of the known active leks occur in 10 core populations across 8 western states, and that 5 of these populations ''were so large and expansive that they were subdivided into 24 subpopulations to facilitate analysis'' (Connelly *et al.* 2004: page 13–4), was cited by managers on the decision support team as part of the reason for their not warranted recommendation.

Although the decision support team referenced the prospective nature of the higher ranking threats in reaching their recommendation, they also acknowledged and considered the fact that these threats were currently occurring at some level across the range of the sage-grouse or in smaller regions within the range. However, because of the relatively long projected risk of extinction, in many cases greater than 200 years, which was minimally 100 years beyond the foreseeable future the Service considered in this case, combined with considering the variety of sources of information generated for and during the risk analysis phase, including the expert panel deliberations and the Conservation Assessment from WAFWA, the decision support team found that the levels of these existing threats, although very real, when considered against the status, trends and distribution of the current population, were not sufficient to result in the greater sage-grouse becoming an endangered species in the next 40 to 100 years.

Other factors cited by the managers as most important for their beliefs about the appropriate listing category included, the large size of the current range, the slow pace with which some of the threat factors are exerting themselves, synergistic effects between threats, large blocks of existing sagebrush habitat, expected range contractions, relative stability of core population areas, expected increases in

infrastructure development in areas that currently have little or none, expected population losses to increase the impact of stochastic events, resiliency of sagebrush habitats to some threats, recent sage-grouse population trends as stable or increasing, and some evidence of positive changes on the sagebrush landscape.

Factors contributing most to uncertainty among the decision support team members included the prospective nature of some of the threats, uncertainty about how pending threats will be managed, and uncertainty about how and if leks can persist in the presence of disturbances.

Since the publication of our 90-day finding we have compiled additional materials and information on the greater sage grouse. We believe we have a fairly complete compilation of the existing relevant information and much of it is summarized above. We also convened a panel of experts and conducted a structured analysis of risk. A decision support team of Service biologists and managers read selected background materials and observed the deliberations of the expert panel. To further inform the Service's final petition response, the decision support team participated in a structured analysis of the optimal listing category where they assessed whether the greater sage grouse qualifies as threatened or endangered. After considering the compiled information, the risk assessment, the applicable conservation actions, and the assessment of the decision support team, we find that the petitioned actions are not warranted at this time.

We will continue to monitor the status of the greater sage-grouse and sagebrush ecosystems, and to accept additional information and comments from all governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References

A complete list of references used in the preparation of this finding is available upon request from the Wyoming Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Wyoming Field Office, U.S. Fish and Wildlife Service, Cheyenne, Wyoming (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 6, 2005.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–583 Filed 1–10–05; 8:45 am]

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Federal Register

Wednesday,
January 12, 2005

Part IV

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2004, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Contact Quasette Crowner, (202) 606–1579.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415, or by calling (202) 606–6500.

The following exceptions were current on June 30, 2004:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) (Reserved).

(g) (Reserved).

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110, but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of

professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associate ship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons who have been certified by state vocational rehabilitation agencies as likely to succeed. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instruction issued by the Office.

(u) Positions when filled by severely physically handicapped persons who: (1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg) Positions when filled by persons with psychiatric disabilities who have demonstrated their ability to perform satisfactorily under a temporary appointment [such as one authorized in 213.3102(i)(3)] or who are certified as likely to be able to perform the essential functions of the job, with or without reasonable accommodation, by a State vocational rehabilitation counselor, a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist. Upon completion of 2 years of satisfactory service under this authority, the employee can be converted, at the discretion of the agency, to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj–kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full-time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 15 positions at grades GS–5/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior

Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(f) (Reserved).

(g) *Bureau of Population, Refugees, and Migration.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) Up to 250 time-limited positions within the Department of State in support of the June 2004 Economic Summit of Industrial Nations. No new appointments may be made under this authority after June 30 2004.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 50 positions in the Office of the Under Secretary (Enforcement).

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as ''interpreter-translator'' and ''special employees,'' when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided, that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) Positions engaged in the reconstruction of Iraq for hiring non-U.S. citizens when there is a severe shortage of candidates with U.S. citizenship. This authority is limited to appointments made on or before July 1, 2004, and is subject to any restrictions set forth in the Department of Defense FY 2002 Appropriations Act.

(c) (Reserved).

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including

scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Acquisitions University.* (1) The Provost and professors.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.* (1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) *Asia-Pacific Center for Security Studies, Honolulu, Hawaii.* (1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

Section 213.3107 Department of the Army

(a)–(c) (Reserved).

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved).

(g) *Defense Language Institute.* (1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA. (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1)–(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred forty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases,

California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama. (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel. (3)-(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in one-year increments for the duration of the in-country program.

(b) *Immigration and Naturalization Service.* (1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) *National Drug Intelligence Center.* All positions.

Section 213.3111 Department of Homeland Security

(a) Up to 50 positions at the GS–5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after September 30, 2005.

(b) Ten positions for over site policy and direction of sensitive law enforcement activities.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades

GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entry men-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided*, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved).

(b)–(c) (Reserved).

(d) *Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Rural Development.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and non-veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural

Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) *Alternative Agricultural Research and Commercialization Corporation.* (1) Executive Director.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) *General.* (1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) *Public Health Service.* (1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in

the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 Broadcasting Board of Governors

(a) *International Broadcasting Bureau.* (1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

Section 213.3133 Federal Deposit Insurance Corporation

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3146 Selective Service System

(a) State Directors.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3162 The President's Crime Prevention Council

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

Section 213.3165 Chemical Safety and Hazard Investigation Board

(a) (Reserved).

(b) Seven positions of either Chemical Incident Investigators or Chemical Safety Recommendation Specialists, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after October 15, 2002, or until the seventh person (who was given an offer of employment on September 13, 2002, and is waiting a physical examination clearance) is appointed, whichever is later.

Section 213.3166 Court Services and Offender Supervision Agency of the District of Columbia

(a) All positions, except for the Director, established to create the Court Services and Offender Supervision Agency of the District of Columbia. No new appointments may be made under this authority after March 31, 2004.

Section 213.3174 Smithsonian Institution

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, two Social Science Program Administrators, and one Middle East Studies Program Administrator.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

Section 213.3190 African Development Foundation

(a) One Enterprise Development Fund Manager. Appointment authority is limited to four years unless extended by the Office.

Section 213.3191 Office of Personnel Management

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

[The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) *Student Educational Employment Program—Student Career Experience Program.* (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

* * * * *

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k)–(l) (Reserved).

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an

individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

(o) *The Federal Career Intern Program*—(1) *Appointments.* Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) *Extensions.* (i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

* * * * *

[The remaining text of provisions pertaining to the Federal Career Intern Program can be found in 5 CFR 213.3202(o).]

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed: (1) A total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

(g) *Defense Security Assistance Agency.* All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)–(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) (Reserved).

(b)–(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Chair and a maximum of four additional Members, Administrative Review Board.

(b) (Reserved).

(c) *Bureau of International Labor Affairs.* (1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3255 Social Security Administration

(a) Temporary and time-limited positions in the Ticket to Work and Work Incentives Advisory Panel. No employees may be appointed after November 17, 2007.

Section 213.3274 Smithsonian Institution

(a) (Reserved).

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEGS60001 Confidential Assistant to the Chairman, Council of Economic Advisers

CEGS60004 Confidential Assistant to the Chairman, Council of Economic Advisers

CEGS60005 Administrative Operations Assistant to the Member (Council for Economic Advisers)

Council on Environmental Quality

EQGS00011 Associate Director for Global Environmental Affairs to the Chairman (Council on Environmental Quality)

EQGS00019 Associate Director for Communications to the Chairman (Council on Environmental Quality)

EQGS00020 Communications Analyst to the Associate Director for Communications

Office of Management and Budget

BOGS00022 Confidential Assistant to the Executive Associate Director

BOGS00038 Deputy to the Associate Director for Legislative Affairs to the Associate Director for Legislative Affairs

BOGS00039 Confidential Assistant to the Associate Director for Legislative Affairs

BOGS00040 Deputy to the Associate Director for Legislative Affairs (Senate) to the Associate Director for Legislative Affairs

BOGS00085 Special Assistant to the Administrator to the Administrator, E-Government and Information Technology

BOGS00150 Policy Analyst (Portfolio Manager) to the Associate Director for E-Government and Information Technology

BOGS60004 Special Assistant to the Administrator, Office of Information and Regulatory Affairs

BOGS60009 Legislative Analyst to the Assistant Director for Legislative Affairs

BOGS60010 Counselor to the Controller to the Controller, Office of Federal Financial Management

BOGS60012 Confidential Assistant to the Controller, Office of Federal Financial Management

BOGS60015 Communications Writer to the Associate Director for Strategic Planning and Communications

BOGS60020 Special Assistant to the Administrator Office of Federal Procurement Policy

BOGS60021 Press Secretary to the Associate Director for Strategic Planning and Communications

BOGS60025 Confidential Assistant to the Deputy Director for Management to the Deputy Director for Management

BOGS60027 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs

BOGS60031 Confidential Assistant to the Deputy Director Office of Management and Budget

BOGS60032 Public Affairs Specialist to the Associate Director for Communications

BOGS60033 Executive Assistant to the Director Office of Management and Budget

BOGS60037 Deputy General Counsel to the General Counsel

BOGS60143 Deputy to the Associate Director for Legislative Affairs (House) to the Associate Director for Legislative Affairs

BOGS60148 Confidential Assistant to the Associate Director for National Security and International Affairs

Office of National Drug Control Policy

QQGS00010 Special Assistant to the Director

QQGS00013 Project Coordinator to the Chief of Staff

QQGS00015 Associate Deputy Director, State and Local Affairs to the Deputy Director for State and Local Affairs

QQGS00016 Staff Assistant to the Associate Director, Legislative Affairs

QQGS00022 Staff Assistant to the Director

QQGS00023 Confidential Assistant to the Chief of Staff

QQGS00025 Legislative Analyst to the Associate Director, Legislative Affairs

QQGS00027 Public Affairs Specialist (Events Manager) to the Press Secretary (Assistant Director)

QQGS60001 Special Assistant to the Director

QQGS60002 Legislative Analyst (White House Liaison) to the Associate Director, Legislative Affairs

QQGS60006 Special Assistant to the Director

QQGS60007 Special Assistant to the Director

Office of the United States Trade Representative

TNGS00012 Confidential Assistant to the United States Trade Representative

TNGS00014 Confidential Assistant to the Chief Agriculture Negotiator

TNGS00016 Public Affairs Specialist to the Chief of Staff

TNGS00070 Deputy Assistant United States Trade Representative for Congressional Affairs to the Assistant United States Trade Representatives for Congressional Affairs

TNGS00071 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Chief of Staff

TNGS60019 Special Textile Negotiator to the United States Trade Representative

Official Residence of the Vice President

RVGS00003 Personal Aide to the Second Lady and Deputy Social Secretary to the Assistant to the Vice President for Operations

Section 213.3303 Office of Science and Technology Policy

TSGS60005 Executive Assistant for Policy and Intergovernmental Affairs to the Associate Director, Science
TSGS60006 Assistant Associate Director for Telecommunications and Information Technology to the Associate Director, Science
TSGS60017 Executive Director, President's Council of Advisors on Science and Technology and Counsel to the Associate Director, Science
TSGS60021 Confidential Assistant to the Chief of Staff
TSGS60029 Confidential Assistant to the Associate Director for Science to the Associate Director, Science
TSGS60032 Assistant to the Director for Legislative Affairs to the Chief of Staff and General Counsel

Section 213.3304 Department of State

DSGS00341 IT Specialist to the Assistant Secretary for Administration
DSGS00425 Foreign Affairs Officer to the Assistant Secretary Bureau of Politico-Military Affairs
DSGS60009 Special Assistant to the Secretary of State
DSGS60110 Special Assistant to the Principal Deputy Assistant Secretary
DSGS60118 Special Assistant to the Deputy Secretary
DSGS60119 Special Advisor to the Assistant Secretary for East Asian and Pacific Affairs
DSGS60128 Protocol Officer to the Chief of Protocol
DSGS60146 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60152 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60153 Staff Assistant to the Secretary of State
DSGS60154 Assistant Chief of Protocol for Ceremonials to the Chief of Protocol
DSGS60156 Confidential Assistant to the Secretary of State
DSGS60159 Staff Assistant to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS60160 Staff Assistant to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60161 Staff Assistant to the Ambassador-At-Large (War Crimes)
DSGS60166 Attorney Advisor to the Deputy Assistant Secretary for Equal Employment Opportunity
DSGS60184 Special Assistant to the Deputy Secretary
DSGS60194 Senior Advisor to the Under Secretary for Arms Control and Security Affairs
DSGS60195 Special Assistant to the Assistant Secretary
DSGS60201 Staff Assistant to the Under Secretary for Global Affairs
DSGS60249 Staff Assistant to the Deputy Secretary
DSGS60267 Foreign Affairs Officer to the Principal Deputy Assistant Secretary
DSGS60317 Senior Policy Advisor to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60355 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60370 Program Officer to the Principal Deputy Assistant Secretary
DSGS60388 Special Assistant to the Deputy Assistant Secretary
DSGS60389 Senior Advisor to the Assistant Secretary
DSGS60394 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60395 Director, Art-In-Embassies Program to the Deputy Assistant Secretary
DSGS60396 Program Officer to the Assistant Secretary
DSGS60409 Public Affairs Specialist to the Assistant Secretary for Western Hemispheric Affairs
DSGS60410 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60417 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60420 Special Assistant to the Assistant Secretary
DSGS60430 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60434 Special Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60444 Foreign Affairs Officer (Visits) to the Chief of Protocol
DSGS60445 Special Advisor to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60450 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60454 Member, Policy Planning Staff to the Director, Policy Planning Staff
DSGS60455 Special Assistant to the Deputy Secretary
DSGS60466 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS60486 Foreign Affairs Officer to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60487 Congressional Affairs Manager to the Assistant Secretary for International Organizational Affairs
DSGS60490 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60499 Senior Advisor to the Assistant Secretary
DSGS60500 Foreign Affairs Officer to the Assistant Secretary for European and Canadian Affairs
DSGS60505 Resource, Plans and Policy Advisor to the Chief Financial Officer
DSGS60506 Special Assistant to the Assistant Secretary for Public Affairs
DSGS60508 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60512 Special Assistant to the Under Secretary for Economic Business and Agricultural Affairs
DSGS60514 Foreign Affairs Officer to the Assistant Secretary for Intelligence and Research
DSGS60520 Director, Office of Public Liaison to the Assistant Secretary for Public Affairs
DSGS60521 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60531 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60539 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60541 Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60542 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60544 Strategic Planning Officer to the Coordinator for International Information Programs
DSGS60552 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60567 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60575 Writer-Editor to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS60577 Public Affairs Specialist to the Under Secretary for Global Affairs
DSGS60585 Staff Assistant to the Managing Director, Office of Equal Opportunity and Civil Rights
DSGS60610 Legislative Analyst to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60702 Special Assistant to the Deputy Chief of Protocol
DSGS60703 Special Assistant to the Assistant Secretary for Economic and Business Affairs

DSGS60707 Executive Director to the Under Secretary for Arms Control and Security Affairs
DSGS60708 Senior Advisor to the Representative to the United Nations
DSGS60711 Staff Assistant to the Deputy Ambassador-At-Large for War Crimes
DSGS60712 Special Advisor to the Assistant Legal Adviser for African Affairs
DSGS60715 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60716 Legislative Management Officer to the Assistant Legal Adviser for African Affairs
DSGS60718 Protocol Officer to the Deputy Chief of Protocol
DSGS60719 Senior Advisor to the Comptroller
DSGS60722 Protocol Officer (Visits) to the Deputy Chief of Protocol
DSGS60723 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60724 Special Assistant to the Director Office Resource Management Office of Foreign Buildings Operations
DSGS60725 Press Officer to the Assistant Secretary for Public Affairs
DSGS60728 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60729 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60731 Staff Assistant to the Director, Policy Planning Staff
DSGS60732 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60733 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60734 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60736 Staff Assistant to the Assistant Secretary
DSGS60737 Special Assistant to the Legal Adviser
DSGS60740 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60741 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60742 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60743 Special Assistant to the Assistant Secretary
DSGS60744 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60745 Special Assistant to the Assistant Secretary
DSGS60746 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60748 Attorney-Advisor to the Assistant Secretary for Administration
DSGS60749 Special Assistant to the Deputy Assistant Secretary
DSGS60750 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60751 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60752 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60756 Special Assistant to the Under Secretary for Global Affairs
DSGS60757 Foreign Affairs Officer to the Assistant Secretary
DSGS60758 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60759 Staff Assistant to the Director
DSGS60760 Public Affairs Specialist to the Assistant Secretary for International Organizational Affairs
DSGS60761 Special Advisor to the Assistant Secretary for International Organizational Affairs
DSGS60764 Foreign Affairs Officer to the Assistant Secretary for East Asian and Pacific Affairs
DSGS60765 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60766 Supervisory Protocol Officer (Visits) to the Deputy Chief of Protocol
DSGS60767 Special Assistant to the Assistant Secretary Bureau of Politico-Military Affairs
DSGS60768 Special Assistant to the Assistant Secretary for Economic and Business Affairs
DSGS60769 Special Assistant to the Under Secretary for Management
DSGS60770 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
DSGS60774 Special Assistant to the Coordinator
DSGS60775 Special Assistant to the Senior Advisor to the Secretary and White House Liaison

Section 213.33 International Boundary and Water Commission

BWGS60001 Confidential Assistant to the Assistant Secretary Oceans, International Environment and Science Affairs

Section 213.3305 Department of the Treasury

DYGS00321 Financial Analyst to the Director, Office of Specialized Development Institutions
DYGS00328 Deputy Assistant Secretary (Policy Coordination) to the Assistant Secretary (Economic Policy)
DYGS00375 Director of Legislative and Governmental Affairs to the Director of the Mint
DYGS00377 Special Assistant to the White House Liaison
DYGS00400 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00416 Senior Advisor to the Deputy Assistant Secretary for Management and Budget
DYGS00425 Special Assistant to the Assistant Secretary (Deputy Under Secretary) International Affairs
DYGS00429 Executive Assistant to the Secretary
DYGS00430 Senior Advisor to the Under Secretary for Domestic Finance
DYGS00432 Senior Advisor to the Deputy Assistant Secretary and Chief Human Capital Officer
DYGS00434 Special Assistant to the Deputy Chief of Staff
DYGS00435 Director of Protocol to the Deputy Assistant Secretary (Headquarters Operations)
DYGS00436 Public Affairs Specialist to the Deputy Assistant Secretary (Public Affairs)
DYGS00437 Special Assistant to the Deputy Assistant Secretary and Chief Human Capital Officer
DYGS00439 Executive Secretary to the Chief of Staff
DYGS00440 Public Affairs Specialist to the Director, Public Affairs
DYGS00441 Director of Outreach to the Deputy Assistant Secretary
DYGS60139 Director of Strategic Planning, Scheduling and Advance to the Chief of Staff
DYGS60250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs)
DYGS60277 Senior Writer to the Assistant Secretary (Public Affairs)
DYGS60317 Public Affairs Specialist to the Director, Public Affairs
DYGS60318 Deputy to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
DYGS60351 Senior Advisor to the Assistant Secretary (Public Affairs)
DYGS60362 Special Assistant to the Assistant Secretary (Financial Institutions)
DYGS60364 Deputy Assistant Secretary to the Assistant Secretary (Financial Institutions)
DYGS60379 Special Assistant for Advance to the Director of Strategic Planning, Scheduling and Advance

DYGS60381 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
DYGS60395 Deputy Executive Secretary to the Executive Secretary
DYGS60396 Senior Advisor to the Deputy Assistant Secretary (Public Liaison)
DYGS60401 Special Assistant for Advance to the Director of Strategic Planning, Scheduling and Advance
DYGS60404 Senior Advisor to the Assistant Secretary (Financial Institutions)
DYGS60405 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
DYGS60417 Senior Advisor to the Deputy Assistant Secretary (Government Financial Policy)
DYGS60421 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs
DYGS61059 Tax Legislative Advisor to the Assistant Secretary (Tax Policy)

Section 213.3306 Office of the Secretary of Defense

DDGS00661 Staff Assistant to the Assistant Secretary of Defense (International Secretary Policy)
DDGS00664 Staff Assistant to the Assistant Secretary of Defense (International Secretary Policy)
DDGS00665 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (Special Operations/Low Intensity Conflict)
DDGS00673 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)
DDGS00682 Staff Assistant to the Deputy Assistant Secretary of Defense (Asia and Pacific)
DDGS00688 Special Assistant to the Principal Deputy Under Secretary of Defense for Policy to the Principal Deputy Under Secretary of Defense for Policy
DDGS00690 Director, Defense Continuity Program Office to the Deputy Under Secretary of Defense (Policy Support)
DDGS00708 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS00714 Special Assistant to the Under Secretary of Defense (Policy)
DDGS00736 Special Assistant to the Principal Deputy Under Secretary of Defense (Policy)
DDGS00749 Staff Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS00755 Personal and Confidential Assistant to Assistant Secretary of Defense (Special Operations/Low Intensity Conflict)
DDGS00757 Special Assistant to the Under Secretary of Defense (Policy) to the Under Secretary of Defense for Policy
DDGS00770 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS00771 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS00778 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS00779 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS00788 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS02518 Chief of Staff to the Inspector General
DDGS16561 Special Assistant to the Director of Defense Research and Engineering
DDGS16649 Special Assistant to the Assistant Deputy Comptroller (Program/Budget)
DDGS16653 Protocol Officer to the Director of Protocol
DDGS16660 Director of Assessments to the Deputy Under Secretary of Defense (International Technology Security)
DDGS16667 Public Affairs Specialist to the Deputy Assistant Secretary of Defense for Public Affairs (Communications)
DDGS16668 Special Assistant to the Assistant Secretary of Defense (Public Affairs) to the Assistant Secretary of Defense Public Affairs
DDGS16675 Personal and Confidential Assistant to the Assistant Secretary of Defense (Reserve Affairs)
DDGS16679 Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Materiel Readiness)
DDGS16685 Administrative Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16692 Confidential Assistant to the Secretary of Defense
DDGS16693 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16694 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16697 Defense Fellow to the Special Assistant to the Secretary and Deputy Secretary of Defense
DDGS16707 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16709 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16718 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS16737 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16740 Confidential Assistant to the Secretary of Defense
DDGS16743 Program Support Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS16758 Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16774 Speechwriter to the Special Advisor to the Deputy Secretary of Defense for Communications Strategy
DDGS16777 Defense Fellow to the Director of Administration and Management/Director of Washington Headquarters Service
DDGS16780 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS16783 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS16784 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16787 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16790 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16791 Public Affairs Specialist to the Public Affairs Specialist
DDGS16796 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)
DDGS16797 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)
DDGS16799 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16800 Researcher Assistant to the Special Assistant for Speechwriting
DDGS16801 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16802 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security)
DDGS16803 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)
DDGS16805 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller) and Deputy Under Secretary of Defense (Management Reform)

DDGS16806 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16807 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16808 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16809 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics)
DDGS16810 Confidential Assistant to the Deputy Under Secretary of Defense (Personnel and Readiness)
DDGS16811 Special Assistant to the Director, Small and Disadvantaged Business Utilities
DDGS16812 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)
DDGS16813 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)
DDGS16814 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)
DDGS16815 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16817 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16818 Special Assistant to the Deputy Assistant Secretary of Defense (Military Community and Family Policy)
DDGS16820 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16825 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy)
DDGS60007 Personal and Confidential Assistant to the Assistant to the Secretary of Defense (Nuclear, Chemical and Biological Defense Programs)
DDGS60033 Personal Secretary to the Deputy Secretary of Defense
DDGS60270 Confidential Assistant to the Executive Secretary to the Senior Executive Council
DDGS60273 Civilian Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60274 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60305 Personal and Confidential Assistant to the Under Secretary of Defense (Personnel and Readiness)
DDGS60312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (International Secretary Policy)
DDGS60314 Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affair)
DDGS60317 Director of Protocol to the Special Assistant to the Secretary and Deputy Secretary of Defense
DDGS60319 Confidential Assistant to the Deputy Secretary of Defense
DDGS60332 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS60333 Speechwriter to the Special Assistant for Speechwriting
DDGS60368 Personal and Confidential Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS60454 Special Assistant to the Director of Net Assessment
DDGS60456 Director, Management Initiatives to the Under Secretary of Defense (Personnel and Readiness)
DDGS60471 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS60475 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)
DDGS60520 Special Assistant to the Deputy Assistant Secretary of Defense (Prisoners of War/Military Police) Director, Prisoners of War Missing Persons Office
DDGS60611 Personal and Confidential Assistant to the Secretary of Defense
DDGS60615 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60621 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60625 Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60651 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller)
DDGS60680 Confidential Assistant to the Deputy Secretary of Defense
DDGS60686 Personal and Confidential Assistant to the General Counsel
DDGS60690 Personal and Confidential Assistant to the Secretary of Defense
DDGS60694 Staff Assistant to the Assistant Secretary of Defense (International Security Affairs)

Section 213.3307 Department of the Army

DWGS00077 Confidential Assistant to the Assistant Secretary of the Army (Civil Works)
DWGS00078 Special Assistant to Deputy Assistant Secretary of the Army for Privatization and Partnerships
DWGS00079 Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs)/Deputy Assistant Secretary (Training, Readiness and Mobilization)
DWGS00080 Confidential Assistant to the General Counsel
DWGS00081 Assistant for Water Resources Policy to the Deputy Assistant Secretary of the Army (Legislation)
DWGS00086 Special Assistant to the Army General Counsel to the General Counsel
DWGS60001 Executive Staff Assistant to the Secretary of the Army
DWGS60002 Special Assistant to the Secretary of the Army
DWGS60026 Special Assistant to the General Counsel

Section 213.3308 Department of the Navy

DWGS60076 Special Assistant to the Assistant Secretary of Army (Civil Works)
DNGS00070 Confidential Assistant to the Assistant Secretary of the Navy (Research Development and Acquisition)
DNGS60056 Confidential Assistant to the Assistant Secretary of the Navy (Financial Management and Comptroller)
DNGS60066 Staff Assistant to the Secretary of the Navy
DNGS60071 Residence Manager and Social Secretary to the Vice President to the Secretary of the Navy

Section 213.3309 Department of the Air Force

DFGS60008 Confidential Assistant to the General Counsel
DFGS60042 Special Assistant for Community Relations to the Director of Communication

Section 213.3310 Department of Justice

DJGS00020 Director, Office of Police Corps and Law Enforcement Education to the Assistant Attorney General for Justice Programs
DJGS00028 Director of Congressional Affairs to the Administrator, Drug Enforcement Administration
DJGS00031 Special Assistant to the Assistant Attorney General, Criminal Division
DJGS00032 Senior Public Affairs Specialist to the Director, Office of Public Affairs
DJGS00033 Counsel to the Assistant Attorney General
DJGS00034 Special Assistant to the Assistant Attorney General, Criminal Division
DJGS00035 Counsel (Senior Attorney) to the Administrator, Drug Enforcement Administration

DJGS00041 Special Assistant to the Director, Office of Public Affairs
DJGS00044 Research Assistant to the Director, Office of Public Affairs
DJGS00076 Public Affairs Specialist to the United States Attorney, Western District, Texas
DJGS00077 Secretary to the United States Attorney, Western District, Arkansas
DJGS00101 Special Assistant to the Director, Office of Public Affairs
DJGS00114 Special Assistant to the Attorney General to the Advisor to the Attorney General and White House Liaison
DJGS00116 Special Assistant to the Director
DJGS00123 Senior Counsel to the Director, Office of Public Affairs
DJGS00130 Counsel to the Assistant Attorney General to the Assistant Attorney General
DJGS00176 Public Affairs Specialist to the Director, Office of Public Affairs
DJGS00187 Counsel to the Assistant Attorney General, Civil Division
DJGS00189 Counsel to the Assistant Attorney General, Civil Division
DJGS00191 Counsel to the Assistant Attorney General, Civil Division
DJGS00193 Senior Counsel to the Assistant Attorney General (Legal Policy)
DJGS00199 Special Counsel to the Assistant Attorney General, Criminal Division
DJGS00207 Special Assistant to the Director, Office on Violence Against Women
DJGS00210 Confidential Assistant to the Assistant Attorney General Tax Division
DJGS00216 Special Assistant to the Director of the Bureau of Justice Assistance
DJGS00217 Counsel to the Director of the Violence Against Women Office
DJGS00218 Special Assistant to the Assistant Attorney General for Justice Programs
DJGS00235 Senior Advisor to the Director, Office of Public Affairs
DJGS00236 Press Assistant to the Director, Office of Public Affairs
DJGS00254 Counselor to the Assistant Attorney General
DJGS00258 Counsel to the Assistant Attorney General
DJGS00265 Press Assistant to the Director, Office of Public Affairs
DJGS00266 Press Assistant to the Director, Office of Public Affairs
DJGS00268 Counsel to the Assistant Attorney General
DJGS00280 Special Assistant to the Assistant Attorney General (Legal Policy)
DJGS00282 Special Assistant to the Assistant Attorney General (Legal Policy)
DJGS00283 Confidential Assistant to the Director
DJGS00286 Special Assistant to the Assistant Attorney General
DJGS00304 Associate Director to the Director
DJGS00320 Deputy Chief of Staff to the Chief of Staff
DJGS00330 Special Assistant to the Director
DJGS00332 Counsel to the Assistant Attorney General
DJGS00333 Special Assistant to the Assistant Attorney General
DJGS00377 Staff Assistant to the Director, Office of Public Affairs
DJGS00380 Principal Deputy Director to the Director, Office of Public Affairs
DJGS00384 Assistant to the Attorney General for Scheduling to the Director of Scheduling and Advance
DJGS00390 Counsel to the Assistant Attorney General to the Assistant Attorney General (Legal Counsel)
DJGS00413 Executive Assistant to the United States Attorney
DJGS00432 Senior Counsel to the Director of the Executive Office for United States Attorneys
DJGS60014 Deputy Administrator to the Administrator Juvenile Justice Delinquency Prevention
DJGS60015 Deputy Director to the Director, National Institute of Justice
DJGS60016 Staff Assistant to the Director, Bureau of Justice Statistics
DJGS60019 Special Assistant to the Chairman
DJGS60023 Special Assistant for International Protocol to the Director, Office of International Affairs
DJGS60038 Secretary (Office Automation) to the United States Attorney, Massachusetts
DJGS60040 Secretary (Office Automation) to the United States Attorney, Eastern District, Michigan
DJGS60115 Special Assistant to the Director
DJGS60144 Special Assistant to the Solicitor General
DJGS60165 Chief of Staff and Senior Counsel to the Associate Attorney General
DJGS60172 Secretary (Office Automation) to the United States Attorney, Western District, Louisiana
DJGS60173 Secretary (Office Automation) to the United States Attorney, Northern District, Oklahoma
DJGS60174 Secretary (Office Automation) to the United States Attorney, Wyoming
DJGS60185 Counsel to the Deputy Attorney General
DJGS60222 Senior Advisor for Congressional and Legislative Affairs to the Director of Communications
DJGS60245 Attorney Advisor (Special Assistant) to the Assistant Attorney General Environment and Natural Resources
DJGS60246 Counsel to the Assistant Attorney General Environment and Natural Resources
DJGS60256 Senior Counsel for Voting Reform to the Assistant Attorney General
DJGS60267 Counsel to the Assistant Attorney General
DJGS60277 Director of Scheduling and Advance to the Attorney General
DJGS60279 Deputy Director to the Senior Counsel to the Assistant Attorney General
DJGS60367 Confidential Assistant to the Attorney General
DJGS60417 Public Affairs Specialist to the United States Attorney, Western District, New York
DJGS60418 Secretary (Office Automation) to the United States Attorney, Nebraska
DJGS60420 Secretary (Office Automation) to the United States Attorney, Eastern District, Pennsylvania
DJGS60423 Secretary (Office Automation) to the United States Attorney, New Mexico
DJGS60426 Secretary (Office Automation) to the United States Attorney, Maryland
DJGS60427 Secretary (Office Automation) to the United States Attorney, New Hampshire
DJGS60429 Secretary (Office Automation) to the United States Attorney, Eastern District, Arkansas
DJGS60430 Secretary (Office Automation) to the United States Attorney, Kansas
DJGS60436 Secretary (Office Automation) to the United States Attorney, Southern District, Alabama
DJGS60437 Secretary (Office Automation) to the United States Attorney, Delaware
DJGS60448 Secretary (Office Automation) to the United States Attorney, Western District, Oklahoma
DJSL00290 Director, Alcohol, Tobacco, Firearms, and Explosives to the Attorney General

Section 213.3311 Department of Homeland Security

DMGS00005 Executive Assistant to the Secretary of the Department of Homeland Security
DMGS00007 Executive Assistant to the Deputy Secretary of the Department of Homeland Security
DMGS00009 White House Liaison to the Chief of Staff

DMGS00011 Executive Assistant to the Chief of Staff
DMGS00017 Executive Assistant to the Inspector General
DMGS00050 Director of Speechwriting to the Assistant Secretary for Public Affairs
DMGS00051 Business Analyst to the Special Assistant
DMGS00057 Director, Local Affairs to the Director, State and Local Affairs
DMGS00058 Special Assistant to the Director, Bureau of Citizenship and Immigration Services
DMGS00059 Director for State Affairs to the Director, State and Local Affairs
DMGS00061 Press Assistant to the Assistant Secretary for Public Affairs
DMGS00062 Associate Executive Secretary (External Coordination) to the Executive Secretary
DMGS00066 Associate Executive Secretary (Internal Coordination) to the Executive Secretary
DMGS00073 Staff Assistant to the Executive Secretary
DMGS00082 Research Coordination Officer to the Executive Secretary
DMGS00083 Press Assistant to the Director of Internal Communications
DMGS00084 Staff Assistant to the Assistant Secretary for Plans, Programs and Budgets
DMGS00086 Writer-Editor to the Director of Speechwriting
DMGS00092 Staff Assistant to the Assistant Secretary for Border and Transportation Security Policy
DMGS00095 Policy Director for Immigration to the Assistant Secretary for Border and Transportation Security Policy
DMGS00097 Policy Analyst to the Special Assistant
DMGS00098 Special Assistant to the Under Secretary for Information Analysis and Infrastructure Protection
DMGS00099 Operations Officer to the Deputy Chief of Staff (Operations)
DMGS00101 Director/Executive Secretariat, Private Sector Advisory Committee to the Special Assistant
DMGS00102 Confidential Assistant to the Chief of Staff
DMGS00103 Public Affairs Specialist to the Director of Internal Communications
DMGS00104 Staff Assistant to the Officer of Civil Rights and Civil Liberties
DMGS00109 Business Liaison to the Special Assistant
DMGS00111 Senior Editor and Correspondence Analyst to the Executive Secretary
DMGS00112 Executive Assistant to the Chief of Staff
DMGS00115 Policy Analyst to the Special Assistant
DMGS00116 Staff Assistant to the Chief of Staff
DMGS00117 Special Assistant to the Under Secretary for Management
DMGS00118 Special Assistant for Administration to the Chief of Staff
DMGS00121 Executive Assistant to the General Counsel
DMGS00122 Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Affairs
DMGS00123 Assistant Director of Legislative Affairs for Border and Transportation Security to the Assistant Secretary for Legislative Affairs
DMGS00125 Writer-Editor to the Executive Secretary
DMGS00126 Director of Communications for Bureau of Citizenship and Immigration Services to the Director of Internal Communications
DMGS00128 Director of Legislative Affairs for Information Analysis and Infrastructure Protection to the Assistant Secretary for Legislative Affairs
DMGS00130 Director of Special Projects to the Director of Internal Communications
DMGS00131 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00134 Writer-Editor (Speechwriter) to the Director of Speechwriting
DMGS00135 Confidential Assistant to the Director, State and Local Affairs
DMGS00137 Special Assistant to the Under Secretary for Information Analysis and Infrastructure Protection
DMGS00138 Deputy Assistant Secretary for Legislative Affairs (Senate) to the Assistant Secretary for Legislative Affairs
DMGS00141 Press Secretary to the Assistant Secretary for Public Affairs
DMGS00143 Senior Advance Representative to the Chief of Staff
DMGS00146 Policy Advisor to the Chief of Staff
DMGS00149 Executive Assistant to the Ombudsman
DMGS00151 Business Liaison to the Special Assistant
DMGS00153 Staff Assistant to the Chief of Staff
DMGS00154 Legislative Policy Advisor to the Assistant Secretary for Border and Transportation Security Policy
DMGS00156 Plans and Operations Integration Officer to the Special Assistant
DMGS00157 Business Liaison to the Special Assistant
DMGS00160 Director of Transportation Security Policy for Border and Transportation Security to the Assistant Secretary for Border and Transportation Security Policy
DMGS00161 Director of Legislative Affairs for Emergency Preparedness and Response to the Chief of Staff
DMGS00162 Director of Community Affairs for Science and Technology to the Assistant Secretary for Plans, Programs and Budgets
DMGS00163 Director of Cargo and Trade Policy for Border and Transportation Security to the Assistant Secretary for Border and Transportation Security Policy
DMGS00164 Special Assistant to the Under Secretary for Information Analysis and Infrastructure Protection
DMGS00165 Deputy Chief of Staff for Operations to the Chief of Staff
DMGS00166 Executive Assistant to the Director, State and Local Affairs
DMGS00167 Executive Assistant to the Under Secretary for Emergency Preparedness and Response
DMGS00169 Executive Assistant to the Director, Office of International Affairs
DMGS00171 Staff Assistant to the Assistant Secretary for Infrastructure Protection
DMGS00172 Counsel to the General Counsel
DMGS00173 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00174 Special Assistant for Special Projects to the Chief of Staff
DMGS00175 Logistics Coordinator to the Executive Director, Homeland Security Advisory Council
DMGS00178 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00180 Confidential Assistant to the Deputy Secretary of the Department of Homeland Security
DMGS00181 Speechwriting Research Assistant to the Director of Speechwriting
DMGS00182 Executive Assistant to the Chief of Staff
DMGS00183 Director of Public Liaison to the Assistant Secretary for Public Affairs
DMGS00185 Policy Advisor to the Deputy Chief of Staff (Policy)
DMGS00186 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00187 Director of Legislative Affairs for Border and Transportation Security to the Assistant Secretary for Legislative Affairs
DMGS00188 Director of Legislative Affairs for Secretarial Offices to the Assistant Secretary for Legislative Affairs
DMGS00189 Assistant Director for Legislative Affairs for Emergency

Preparedness and Response to the Chief of Staff
DMGS00190 Counsel to the General Counsel
DMGS00191 Director of Scheduling and Advance to the Deputy Chief of Staff for Operations
DMGS00192 Special Assistant to the Chief of Staff
DMGS00193 Special Assistant to the Under Secretary for Border and Transportation Security
DMGS00195 Policy Analyst to the Director, Office for Domestic Preparedness
DMGS00196 Executive Assistant to the Under Secretary for Science and Technology
DMGS00198 Special Assistant to the Assistant Secretary for Plans, Programs and Budgets
DMGS00199 Staff Assistant to the Chief of Staff for Immigration and Customs Enforcement
DMGS00200 Deputy White House Liaison to the White House Liaison
DMGS00201 Business Liaison to the Special Assistant
DMGS00202 Director of Policy to the Chief of Staff
DMGS00203 Public Liaison Officer to the Director of Public Liaison
DMGS00204 Deputy Press Secretary to the Press Secretary
DMGS00205 Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets
DMGS00206 Press Assistant to the Director of Internal Communications
DMGS00207 Assistant Press Secretary to the Press Secretary
DMGS00209 Public Liaison Officer to the Director of Public Liaison
DMGS00211 Staff Assistant to the Deputy Chief of Staff for Operations
DMGS00214 Communications Director for Immigration and Customs Enforcement to the Chief of Staff for Immigration and Customs Enforcement
DMGS00217 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00219 Executive Assistant to the Special Assistant
DMGS00220 Senior Advance Representative to the Director of Scheduling and Advance
DMGS00221 Public Outreach Specialist to the Director of Special Projects
DMGS00222 Director of Communications for Information Analysis and Infrastructure Protection to the Director of Internal Communications
DMGS00223 Scheduler to the Secretary to the Deputy Chief of Staff for Operations
DMGS00224 Policy Assistant for Emergency Preparedness and Response/Federal Emergency Management Agency to the Chief of Staff
DMGS00225 Press Secretary for Emergency Preparedness and Response/Federal Emergency Management Agency to the Chief of Staff
DMGS00226 Director of Communications for Emergency Preparedness and Response to the Chief of Staff
DMGS00228 Director of Communications, Office of Domestic Preparedness to the Chief of Staff and Senior Policy Advisor
DMGS00229 Director of International Affairs, Emergency Preparedness and Response to the Chief of Staff
DMGS00231 Director of Communications for Science and Technology to the Deputy Assistant Secretary for Public Affairs
DMGS00232 Press Assistant to the Director of Internal Communications
DMGS00235 Press Secretary for Bureau of Citizenship and Immigration to the Chief of Staff
DMGS00236 Special Assistant to the Chief of Staff
DMGS00237 Special Assistant to the Director, Mt. Weather Emergency Operations Division to the Executive Administrator, Emergency Management Center
DMGS00240 External Affairs Coordinator to the Chief of Staff
DMGS00241 Assistant Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Affairs
DMGS00242 Confidential Assistant to the Director, Local Affairs
DMGS00243 Writer-Editor to the Director of Speechwriting
DMGS00244 Operations Assistant to the Special Assistant
DMGS00246 Special Assistant to the Assistant Secretary for Information Analysis
DMOT00138 Policy Analyst to the Administrator, Transportation Security Administration
DMOT00139 Director of Special Projects for Transportation Security Policy to the Assistant Administrator for Transportation Security Policy
DMOT00184 Director of Land, Maritime, and Cargo Security Policy to the Assistant Administrator for Transportation Security Policy
DMOT00190 Director, Stakeholder and Industry Affairs to the Administrator, United States Fire Administration

Section 213.3312 Department of the Interior

DIGS01000 Special Assistant to the Director Minerals Management Service
DIGS01001 Special Assistant—Scheduling and Advance to the Director of Scheduling and Advance
DIGS01003 Special Assistant—Lewis and Clark to the Director, External and Intergovernmental Affairs
DIGS01009 Press Secretary to the Director, Office of Communications
DIGS01016 Counselor to the Assistant Secretary—Indian Affairs to the Assistant Secretary of Indian Affairs
DIGS01017 Hispanic Media Outreach Coordinator to the Director, Office of Communications
DIGS01019 Confidential Assistant to the Senior Adviser to the Secretary for Alaskan Affairs
DIGS01020 Special Assistant to the Deputy Assistant Secretary Indian Affairs
DIGS50001 Counselor to the Assistant Secretary—Indian Affairs to the Assistant Secretary of Indian Affairs
DIGS60025 Special Assistant to the Secretary
DIGS60037 Hispanic Media Outreach Coordinator to the Director, Office of Communications
DIGS60068 Associate Director—House to the Director, Congressional and Legislative Affairs
DIGS60086 Special Assistant to the Director Minerals Management Service
DIGS60091 Special Assistant to the Director, External and Intergovernmental Affairs
DIGS60092 Special Assistant to the Director, External and Intergovernmental Affairs
DIGS60095 Special Assistant for—Communications to the Assistant Secretary of Indian Affairs
DIGS60103 Special Assistant to the Assistant Secretary of Indian Affairs
DIGS60124 Special Assistant to the Director, United States Fish and Wildlife Service
DIGS60151 Special Assistant to the Deputy Secretary of the Interior
DIGS60490 Special Assistant (Advance) to the Deputy Chief of Staff
DIGS60518 Special Assistant to the Director Bureau of Land Management
DIGS60525 Special Assistant to the Assistant Secretary-Land and Minerals Management
DIGS60526 Special Assistant to the Chief of Staff
DIGS60531 Special Assistant to the Solicitor
DIGS60551 Special Assistant for Scheduling and Advance to the Deputy Chief of Staff
DIGS60559 Special Assistant for Scheduling and Advance to the Deputy Chief of Staff
DIGS60560 Associate Director—Senate to the Director, United States Fish and Wildlife Service

DIGS60561 Special Assistant to the Chief of Staff
DIGS60567 White House Liaison to the Chief of Staff
DIGS61012 Special Assistant—Advance to the Director of Scheduling and Advance
DIGS61015 Special Assistant to the Chief of Staff
DIGS61016 Special Assistant to the Executive Director Take Pride In America
DIGS61018 Special Assistant to the White House Liaison
DIGS61019 Director—Scheduling and Advance to the Chief of Staff

Section 213.3313 Department of Agriculture

DAGS00139 Director of External Affairs to the Administrator for Risk Management
DAGS00154 Special Assistant to the Chief of Staff
DAGS00157 Special Assistant to the Under Secretary for Research, Education and Economics
DAGS00158 Director of Constituent Affairs to the Deputy Chief of Staff
DAGS00160 Special Assistant to the Administrator, Farm Service Agency
DAGS00161 Confidential Assistant to the Chief to the Chief, Natural Research Conservation Service
DAGS00164 Director of Web Design to the Deputy Chief of Staff
DAGS00165 Special Assistant for the Office of Homeland Security to the Secretary
DAGS00166 Confidential Assistant to the Secretary
DAGS00169 Director of Hispanic Outreach to the Deputy Chief of Staff
DAGS00174 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00176 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00179 Special Assistant to the Administrator to the Administrator for Risk Management
DAGS00181 Special Assistant to the Under Secretary for Natural Resources and Environment
DAGS00182 Special Assistant to the Chief to the Chief, Natural Research Conservation Service
DAGS00183 Director, Tobacco Programs to the Deputy Administrator
DAGS00186 White House Liaison to the Secretary
DAGS00190 Confidential Assistant to the Administrator, Farm Service Agency
DAGS00192 Special Assistant to the Chief Information Officer
DAGS00196 Confidential Assistant to the Director of Civil Rights
DAGS00198 Special Assistant to the Special Assistant
DAGS00200 Special Assistant to the Secretary
DAGS00201 Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations
DAGS00202 Special Assistant to the Under Secretary for Rural Development
DAGS00300 Staff Assistant to the Administrator, Foreign Agricultural Service
DAGS00500 Special Assistant to the Chief of Staff
DAGS00602 Confidential Assistant to the Under Secretary for Rural Development
DAGS00604 Confidential Assistant to the Director, Office of Business and Program Integration
DAGS00605 Confidential Assistant to the Administrator for Risk Management
DAGS00607 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00611 Director to the Administrator, Food and Nutrition Service
DAGS00700 Special Assistant to the Assistant Secretary for Congressional Relations
DAGS00701 Deputy Director, Office of Intergovernmental Affairs to the Director, Intergovernmental Affairs
DAGS00702 Presidential Management Agenda Coordinator to the Assistant Secretary for Administration
DAGS00704 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00706 Confidential Assistant to the Deputy Assistant Secretary for Congressional Relations
DAGS00707 Special Assistant to the Secretary
DAGS00709 Special Assistant to the Under Secretary for Rural Development
DAGS00712 Confidential Assistant to the Administrator
DAGS00715 Confidential Assistant to the Secretary
DAGS00716 Special Assistant to the Administrator, Animal and Plant Health Inspection Service
DAGS00717 Special Assistant to the Administrator, Food and Nutrition Service
DAGS00718 Special Assistant to the Administrator, Farm Service Agency
DAGS00719 Special Assistant to the Deputy Under Secretary for Rural Economic Community Development
DAGS00720 Special Assistant to the Administrator
DAGS60035 Staff Assistant to the Administrator for Risk Management
DAGS60105 Confidential Assistant to the Chief of Staff
DAGS60110 Special Assistant to the Secretary
DAGS60114 Confidential Assistant to the Deputy Secretary
DAGS60116 Confidential Assistant to the Under Secretary for Rural Development
DAGS60121 Confidential Assistant to the Chief Financial Officer
DAGS60123 Special Assistant to the Under Secretary for Natural Resources and Environment
DAGS60129 Special Assistant to the Administrator for Risk Management
DAGS60131 Director of Advance to the Director of Communications
DAGS60132 Special Assistant to the Under Secretary for Food Safety
DAGS60135 Confidential Assistant to the Administrator, Foreign Agricultural Service
DAGS60138 Special Assistant to the Administrator
DAGS60140 Confidential Assistant to the Director, Office of Small and Disadvantaged Business Utilization
DAGS60147 Confidential Assistant to the Administrator, Rural Housing Service
DAGS60159 Special Assistant to the Administrator, Foreign Agricultural Service
DAGS60160 Special Assistant to the Deputy Secretary
DAGS60162 Assistant to the Deputy Administrator for Commodity Operations
DAGS60163 Director Native American Programs to the Assistant Secretary for Congressional Relations
DAGS60231 Director, Legislative and Public Affairs Staff to the Deputy Under Secretary for Rural Development
DAGS60263 Special Assistant to the Chief, Natural Research Conservation Service
DAGS60332 Confidential Assistant to the Administrator
DAGS60355 Director of Speech Writing to the Director of Communications
DAGS60384 Confidential Assistant to the Secretary
DAGS60427 Confidential Assistant to the Chief of Staff
DAGS60436 Confidential Assistant to the Administrator
DAGS60451 Special Assistant to the Administrator, Farm Service Agency
DAGS60486 Deputy Press Secretary to the Deputy Chief of Staff
DAGS60534 Confidential Assistant to the Director of Communications
DAGS60556 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
DAGS60566 Confidential Assistant to the Administrator

DAGS60592 Special Assistant to the Administrator, Farm Service Agency

Section 213.3314 Department of Commerce

DCGS00065 Confidential Assistant to the Assistant Secretary for Economic Development
DCGS00072 Director, Intergovernmental Affairs to the Deputy Assistant Secretary for Programs Research and Evaluation
DCGS00161 Confidential Assistant to the Under Secretary for International Trade
DCGS00181 Senior Advisor to the Assistant Secretary for Telecommunications and Information
DCGS00200 Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental affairs
DCGS00202 Legislative Affairs Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS00218 Senior Advisor to the Regional Administrator, Northwest Region
DCGS00227 Confidential Assistant to the National Director, Minority Business Development Agency
DCGS00275 Special Assistant to the Director, Office of Business Liaison
DCGS00278 Special Assistant to the Assistant Secretary for Export Administration
DCGS00290 Special Assistant to the Director, Office of Business Liaison
DCGS00298 Special Assistant to the Deputy Assistant Secretary for Communications and Information
DCGS00325 Confidential Assistant to the Director of Global Trade Programs
DCGS00326 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00327 Senior Advisor to the Deputy Secretary
DCGS00359 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00368 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS00388 Confidential Assistant to the Assistant Secretary for Manufacturing and Services
DCGS00389 Senior Advisor to the Assistant Secretary for Import Administration
DCGS00395 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00420 Special Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00425 Director of Public Affairs to the Under Secretary for International Trade
DCGS00429 Confidential Assistant to the Director's Office/White House Liaison
DCGS00433 Senior Policy Advisor to the Chief of Staff
DCGS00444 Senior Advisor to the Assistant Secretary for Economic Development
DCGS00447 Confidential Assistant to the Director of Scheduling
DCGS00452 Confidential Assistant to the Chief of Staff
DCGS00461 Confidential Assistant to the Chief Economist and Special Advisor to the Secretary
DCGS00467 Confidential Assistant to the Deputy Chief of Staff for Policy
DCGS00468 Special Assistant to the Under Secretary for Export Administration
DCGS00486 Deputy Director of Speechwriting to the Director for Speechwriting
DCGS00488 Confidential Assistant to the Director, Executive Secretariat
DCGS00492 Confidential Assistant to the Executive Assistant
DCGS00507 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00514 Policy Advisor to the Assistant Secretary for Export Enforcement
DCGS00531 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00534 Confidential Assistant to the Deputy Assistant Secretary for Transportation and Machinery
DCGS00539 Special Assistant to the Director, Executive Secretariat
DCGS00553 Confidential Assistant to the Under Secretary for Export Administration
DCGS00558 Confidential Assistant to the Director of Advance
DCGS00570 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00571 Senior Policy Advisor to the Deputy Assistant Secretary for Service Industries, Tourism and Finance
DCGS00573 Special Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00576 Deputy Director, Office of Advance to the Director of Advance
DCGS00599 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS00608 Confidential Assistant to the Chief of Staff to the Under Secretary
DCGS00609 Confidential Assistant to the Chief of Staff
DCGS00610 Chief of Staff to the Under Secretary for International Trade
DCGS00611 Senior Advisor to the Under Secretary for International Trade
DCGS00619 Confidential Assistant to the Assistant Secretary for Economic Development
DCGS00623 Special Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00628 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00629 Deputy Director of Public Affairs to the Director of Public Affairs
DCGS00639 Press Secretary to the Director of Public Affairs
DCGS00640 Speechwriter to the Director of Public Affairs
DCGS00641 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00653 Deputy Director, Office of Public Affairs to the Director of Public Affairs
DCGS00657 Confidential Assistant to the Assistant Secretary for Export Enforcement
DCGS00658 Confidential Assistant to the Under Secretary for International Trade
DCGS00660 Public Affairs Director to the Assistant Secretary for Manufacturing and Services
DCGS00675 Special Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00680 Deputy Press Secretary to the Director of Public Affairs
DCGS00684 Director for Speechwriting to the Director of Public Affairs
DCGS00686 Director of Advance to the Chief of Staff
DCGS17901 Public Affairs Specialist to the Director of Public Affairs
DCGS60173 Senior Advisor to the Assistant Secretary for Economic Development
DCGS60193 Special Assistant to the Deputy Assistant Secretary for Transportation and Machinery
DCGS60194 Special Assistant to the Chief of Staff
DCGS60225 Director, Congressional and Public Affairs to the Under Secretary for Export Administration
DCGS60232 Chief Counsel to the Assistant Secretary for Economic Development
DCGS60276 Executive Assistant to the Under Secretary for Economic Affairs
DCGS60287 Confidential Assistant to the Assistant Secretary for Export Administration
DCGS60289 Intergovernmental Affairs Specialist to the Director, Office of Organization and Management Systems

DCGS60292 Legislative Affairs Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS60302 Director of External Affairs to the Director, Office of Public and Constituent Affairs
DCGS60308 Special Assistant to the Executive Director, Office of Export Assistance and Business Outreach
DCGS60309 Senior Advisor to the National Director, Minority Business Development Agency
DCGS60330 Special Assistant to the Director Advocacy Center
DCGS60342 Deputy Director to the Director, Office of White House Liaison
DCGS60343 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS60350 Deputy Director to the Director, Office of Business Liaison
DCGS60353 Confidential Assistant to the Assistant Secretary and Director General of United States/For Commercial Services
DCGS60354 Public Affairs Specialist to the Assistant Secretary for Telecommunications and Information
DCGS60372 Senior Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
DCGS60384 Public Affairs Specialist to the Assistant Director for Operations
DCGS60385 Senior Analyst to the Director
DCGS60402 Chief of Staff to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
DCGS60409 Confidential Assistant to the Executive Assistant
DCGS60415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS60423 Special Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks
DCGS60445 Public Affairs Specialist to the Assistant Secretary for Economic Development
DCGS60446 Senior Advisor to the Under Secretary for Export Administration
DCGS60448 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60490 Director of Scheduling to the Chief of Staff
DCGS60512 Special Advisor to the Under Secretary for Export Administration
DCGS60527 Executive Assistant to the Secretary
DCGS60532 Senior Counsel to the General Counsel
DCGS60544 Senior Advisor to the Under Secretary for International Trade
DCGS60551 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS60583 Special Assistant to the Assistant Secretary for Administrator and Chief Financial Officer
DCGS60596 Confidential Assistant to the Director of Public Affairs
DCGS60659 Director, Office of White House Liaison to the Chief of Staff
DCGS60688 Confidential Assistant to the Director of Global Trade Programs
DCGS60690 Special Assistant to the Assistant Secretary for Market Access and Compliance

Section 213.3315 Department of Labor

DLGS06119 Special Assistant to the Director of Scheduling and Advance
DLGS60003 Special Assistant to the Chief of Staff
DLGS60007 Special Assistant to the Secretary of Labor
DLGS60009 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60011 Staff Assistant to the Chief Financial Officer
DLGS60015 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60017 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60025 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60041 Staff Assistant to the Secretary of Labor
DLGS60044 Attorney Advisor (Labor) to the Solicitor of Labor
DLGS60055 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60076 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60077 Special Assistant to the Chief Financial Officer
DLGS60081 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60091 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60092 Senior Advisor to the Deputy Solicitor (National Operations)
DLGS60093 Special Assistant to the Secretary of Labor
DLGS60094 Director of Media Affairs to the Assistant Secretary for Public Affairs
DLGS60099 Special Assistant to the Deputy Assistant Secretary for Employment and Training
DLGS60101 Chief of Staff to the Assistant Secretary for Employment Standards
DLGS60103 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60104 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60107 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60109 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60110 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60111 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60112 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60113 Special Assistant to the Deputy Assistant Secretary
DLGS60116 Special Assistant to the Chief Financial Officer
DLGS60117 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60118 Staff Assistant to the Secretary of Labor
DLGS60121 Special Assistant to the Secretary of Labor
DLGS60122 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60123 Special Assistant to the Deputy Assistant Secretary
DLGS60125 Special Assistant to the Chief of Staff
DLGS60127 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60130 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60131 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60133 Chief of Staff to the Director of the Women's Bureau
DLGS60138 Chief of Staff to the Assistant Secretary for Mine Safety and Health
DLGS60139 Special Assistant to the Assistant Secretary for Public Affairs

DLGS60145 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60149 Special Assistant to the Director of the Women's Bureau
DLGS60154 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60159 Special Assistant to the Deputy Under Secretary for International Affairs
DLGS60160 Deputy Counselor to the Secretary of Labor
DLGS60161 Staff Assistant to the Assistant Secretary for Public Affairs
DLGS60168 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60169 Deputy Director, Executive Secretariat to the Executive Secretary
DLGS60171 Special Assistant to the Secretary of Labor
DLGS60172 Special Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60173 Chief of Staff to the Assistant Secretary for Disability Employment Policy
DLGS60174 Staff Assistant to the Secretary of Labor
DLGS60175 Associate Assistant Secretary for Policy to the Assistant Secretary for Policy
DLGS60181 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60182 Staff Assistant to the Senior Advisor to the Secretary
DLGS60185 Deputy Director to the Director, Office of Faith Based and Community Initiatives
DLGS60187 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60189 Special Assistant to the Chief Financial Officer
DLGS60190 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60191 Chief Economist to the Assistant Secretary for Policy
DLGS60192 Chief of Staff to the Assistant Secretary for Employee Benefits Security
DLGS60194 Director of Scheduling and Advance to the Secretary of Labor
DLGS60195 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60196 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60197 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60198 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60204 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60205 Deputy Director, 21st Century Workforce to the Director, 21st Century Workforce
DLGS60208 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60209 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60210 Special Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60214 Staff Assistant to the Secretary of Labor
DLGS60215 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60220 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60225 Staff Assistant to the Assistant Secretary for Public Affairs
DLGS60229 Special Assistant to the Assistant Secretary for Disability Employment Policy
DLGS60232 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60233 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60237 Special Assistant to the Secretary of Labor
DLGS60240 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60242 Special Assistant to the Assistant Secretary for Policy
DLGS60244 Special Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60245 Special Assistant to the Secretary of Labor
DLGS60246 Staff Assistant to the Director, 21st Century Workforce
DLGS60247 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60248 Special Assistant to the Director of Public Liaison
DLGS60252 Special Assistant to the Director, 21st Century Workforce
DLGS60253 Special Assistant to the Deputy Secretary of Labor
DLGS60255 Staff Assistant to the Secretary of Labor
DLGS60256 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60260 Special Assistant to the Director of Public Liaison
DLGS60263 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60264 Chief of Staff to the Wage and Hour Administrator
DLGS60267 Speechwriter to the Assistant Secretary for Public Affairs
DLGS60269 Special Assistant to the Secretary of Labor
DLGS60270 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60272 Special Assistant to the Director of Public Liaison
DLGS60277 Special Assistant to the Assistant Secretary for Administration and Management

Section 213.3316 Department of Health and Human Services

DHGS00034 Executive Assistant to the Principal Deputy Assistant Secretary for Health
DHGS00268 Special Assistant to the Executive Secretary to the Department
DHGS00378 Special Assistant to the Assistant Secretary for Public Affairs
DHGS00492 Deputy White House Liaison for Boards and Committees to the Chief of Staff
DHGS00666 Deputy Director for Intergovernmental Affairs (Operations) to the Director of Intergovernmental Affairs
DHGS60002 Special Assistant to the Chief of Staff
DHGS60014 Director, Correspondence Control Center to the Executive Secretary to the Department
DHGS60017 Director of Scheduling to the Chief of Staff
DHGS60026 Special Assistant to the Director of Public Affairs
DHGS60031 Speechwriter to the Assistant Secretary for Public Affairs
DHGS60052 Chief Acquisitions Officer to the Chief of Staff
DHGS60055 Special Assistant for Grants to the Chief of Staff
DHGS60062 Deputy Director of Legislation to the Director, Center for Disease Control and Prevention Administration
DHGS60126 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Health)
DHGS60129 Special Assistant to the Administrator, Centers for Medicare and Medicaid Services
DHGS60167 Confidential Assistant to the Deputy Assistant Secretary for Public Affairs Policy and Strategy to the Assistant Secretary for Public Affairs
DHGS60236 Secretary's Regional Representative for Intergovernmental Affairs to the Director of Intergovernmental Affairs

DHGS60237 Regional Director, New York, New York, Region II to the Director of Intergovernmental Affairs
DHGS60240 Regional Director, Dallas, Texas, Region VI to the Director of Intergovernmental Affairs
DHGS60243 Regional Representative, Atlanta, Georgia, Region IV to the Director of Intergovernmental Affairs
DHGS60244 Regional Director, Seattle, Washington, Region X to the Deputy Secretary, Department of Health and Human Services
DHGS60247 Secretary's Regional Representative, Philadelphia, PA to the Director of Intergovernmental Affairs
DHGS60252 Regional Director, Denver, Colorado, Region VIII to the Director of Intergovernmental Affairs
DHGS60293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
DHGS60331 Special Assistant to the Director, Office of Strategic Operations and Regulatory Affairs
DHGS60336 Special Assistant to the Deputy Assistant Secretary for Legislation (Health)
DHGS60345 Director of Public Affairs to the Assistant Secretary, Administration for Children and Families
DHGS60347 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative (Congressional Liaison)
DHGS60374 Confidential Assistant to the Executive Secretary
DHGS60383 Special Assistant to the Assistant Secretary for Public Affairs
DHGS60399 Special Assistant to the Commissioner, Administration for Children, Youth and Families
DHGS60412 Regional Director, San Francisco, California, Region IX to the Director of Intergovernmental Affairs
DHGS60417 Regional Director, Kansas City, Missouri, Region VII to the Director of Intergovernmental Affairs
DHGS60427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary, Administration for Children and Families
DHGS60436 Associate Commissioner to the Assistant Secretary, Administration for Children and Families
DHGS60497 Special Assistant for International and Immigration Issues to the Assistant Secretary, Administration for Children and Families
DHGS60519 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Policy and Communications)
DHGS60523 Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary, Health
DHGS60525 Confidential Assistant to the Director, Office of Strategic Operations and Regulatory Affairs
DHGS60539 Special Assistant to the General Counsel
DHGS60541 Special Assistant to the Deputy Director, Office of Child Support Enforcement
DHGS60556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
DHGS60628 Special Assistant to the Administrator, Substance Abuse and Mental Health Service
DHGS60629 Executive Director, President's Commission on HIV/AIDS to the Assistant Secretary, Health
DHGS60659 Counselor to the Deputy Secretary, Department of Health and Human Services
DHGS60665 Deputy Director for Policy, Intergovernmental Affairs to the Director of Intergovernmental Affairs
DHGS60667 Confidential Assistant to the Executive Secretary to the Department
DHGS60675 Special Assistant for Aging to the Assistant Secretary for Aging (Commissioner for Aging)
DHGS60684 Special Assistant to the Principal Deputy Assistant Secretary for Legislation
DHGS60685 Special Assistant to the Deputy Assistant Secretary for Legislation (Planning & Budget)

Section 213.3317 Department of Education

DBGS00081 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00094 Special Assistant to the Deputy Assistant Secretary for Regional Services
DBGS00184 Confidential Assistant to the Special Assistant
DBGS00198 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00200 Special Assistant to the Senior Advisor to the Secretary
DBGS00202 Deputy Assistant Secretary for Policy to the Assistant Secretary for Elementary and Secondary Education
DBGS00204 Special Assistant to the Chief Financial Officer
DBGS00208 Special Assistant to the Director, White House Initiative on Hispanic Education
DBGS00211 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
DBGS00212 Confidential Assistant to the Special Assistant
DBGS00216 Deputy Secretary's Regional Representative, Region X to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS00218 Director, White House Initiative on Tribal Colleges and Universities to the Chief of Staff
DBGS00219 Special Assistant to the Deputy Chief of Staff for Operations
DBGS00222 Confidential Assistant to the Senior Advisor to the Secretary
DBGS00230 Confidential Assistant to the Deputy Under Secretary for Innovation and Improvement
DBGS00231 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS00235 Associate Deputy Under Secretary for Improvement and Reform to the Deputy Under Secretary for Innovation and Improvement
DBGS00236 Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS00237 Executive Assistant to the General Counsel
DBGS00239 Confidential Assistant to the Special Assistant
DBGS00242 Special Assistant to the Under Secretary
DBGS00246 Confidential Assistant to the Deputy Assistant Secretary
DBGS00249 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS00250 Confidential Assistant to the Director, White House Liaison
DBGS00255 Special Assistant to the Chief of Staff
DBGS00260 Deputy Secretary's Regional Representative—Region VIII to the Deputy Assistant Secretary for Regional Services
DBGS00261 Deputy Secretary's Regional Representative—Region VII to the Deputy Assistant Secretary for Regional Services
DBGS00262 Confidential Assistant to the Senior Advisor to the Secretary
DBGS00265 Special Assistant to the Assistant Secretary for Management/Chief Information Officer
DBGS00269 Special Assistant to the Deputy Assistant Secretary
DBGS00271 Special Assistant to the Chief of Staff
DBGS00272 Special Assistant to the Chief of Staff to the Under Secretary
DBGS00274 Deputy Secretary's Regional Representative Region II to the Deputy Assistant Secretary for Regional Services
DBGS00276 Confidential Assistant to the Chief of Staff
DBGS00280 Confidential Assistant to the Chief of Staff to the Deputy Secretary
DBGS00281 Confidential Assistant to the Chief of Staff to the Under Secretary

DBGS00282 Confidential Assistant to the Chief of Staff
DBGS00284 Confidential Assistant (Protocol) to the Deputy Chief of Staff for Operations
DBGS00285 Special Assistant (Education Attache to the United States Mission to the United Nations Educational, Scientific and Cultural Organization) to the Secretary
DBGS00287 Confidential Assistant to the Deputy Assistant Secretary
DBGS00290 Confidential Assistant to the Deputy Assistant Secretary
DBGS00291 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00294 Special Assistant (Deputy Director, White House Liaison) to the Special Assistant (White House Liaison)
DBGS00296 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00298 Confidential Assistant to the Deputy Director of Communications, Office of Public Affairs
DBGS00299 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00301 Deputy Assistant Secretary for Regional Services to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS00303 Director, White House Initiative on Hispanic Education to the Chief of Staff
DBGS00304 Deputy Chief of Staff for Strategy/Policy to the Chief of Staff
DBGS00305 Special Assistant to the Director Office of Public Affairs (Communications Director)
DBGS00306 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00307 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00308 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
DBGS00309 Special Assistant to the Chief of Staff
DBGS00312 Confidential Assistant to the Assistant Secretary for Postsecondary Education
DBGS00313 Deputy Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS00315 Special Assistant to the Deputy Secretary of Education
DBGS00316 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00317 Confidential Assistant to the Deputy Assistant Secretary for Regional Services
DBGS00318 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison
DBGS00320 Confidential Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services
DBGS00321 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00322 Confidential Assistant to the Deputy Secretary of Education
DBGS00323 Confidential Assistant to the Deputy Under Secretary for Innovation and Improvement
DBGS00324 Special Assistant to the Senior Advisor to the Secretary
DBGS00325 Press Secretary to the Director Office of Public Affairs (Communications Director)
DBGS00326 Special Assistant to the Senior Advisor to the Secretary
DBGS00327 Special Assistant to the Deputy Director of Communications, Office of Public Affairs
DBGS00329 Special Assistant to the Chief of Staff
DBGS00330 Confidential Assistant to the Deputy Under Secretary for Innovation and Improvement
DBGS00331 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
DBGS00332 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00333 Confidential Assistant to the Senior Advisor to the Secretary
DBGS00334 Special Assistant to the Deputy Secretary of Education
DBGS00335 Confidential Assistant to the Deputy Secretary of Education
DBGS00336 Special Assistant to the Senior Advisor to the Secretary
DBGS06229 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS60006 Confidential Assistant to the Chief of Staff to the Under Secretary
DBGS60015 Special Assistant to the Deputy Assistant Secretary for Regional Services
DBGS60028 Deputy Secretary's Regional Representative, Region VI to the Secretary's Regional Representative
DBGS60037 Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60038 Secretary's Regional Representative, Region I, Boston, MA to the Deputy Assistant Secretary for Regional Services
DBGS60048 Special Assistant to the General Counsel
DBGS60052 Deputy Director to the Director
DBGS60055 Secretary's Regional Representative, Region VIII to the Deputy Assistant Secretary for Regional Services
DBGS60075 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS60077 Special Assistant to the Director, Office of Scheduling and Briefing
DBGS60079 Confidential Assistant to the Deputy Chief of Staff for Operations
DBGS60084 Confidential Assistant to the Director Office of Public Affairs (Communications Director)
DBGS60085 Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services
DBGS60088 Special Assistant to the Deputy Secretary of Education
DBGS60092 Secretary's Regional Representative, Region V to the Deputy Assistant Secretary for Regional Services
DBGS60093 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS60096 Special Assistant to the Deputy Assistant Secretary for Regional Services
DBGS60113 Special Assistant to the Director Office of Public Affairs (Communications Director)
DBGS60115 Secretary's Regional Representative, Region X to the Deputy Assistant Secretary for Regional Services
DBGS60119 Special Assistant to the Chief of Staff
DBGS60120 Director, Office of Scheduling and Briefing to the Chief of Staff
DBGS60122 Secretary's Regional Representative, Region VII to the Deputy Assistant Secretary for Regional Services
DBGS60124 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS60125 Special Assistant (Executive Assistant) to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60126 Deputy Secretary's Regional Representative, Region I to the Secretary's Regional Representative, Region I, Boston, MA
DBGS60127 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS60129 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS60130 Special Assistant to the Director

DBGS60140 Deputy Chief of Staff for Operations to the Chief of Staff
DBGS60142 Secretary's Regional Representative, Region IV to the Deputy Assistant Secretary for Regional Services
DBGS60143 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS60145 Confidential Assistant to the Deputy Director
DBGS60150 Special Assistant to the Chief of Staff
DBGS60151 Special Assistant to the Chief of Staff
DBGS60154 Director, Faith-Based and Community Initiatives Center to the Chief of Staff
DBGS60164 Confidential Assistant to the Chief of Staff to the Under Secretary
DBGS60166 Executive Assistant to the Assistant Secretary for Postsecondary Education
DBGS60171 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60174 Special Assistant to the Chief Financial Officer
DBGS60175 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS60176 Confidential Assistant to the Deputy Assistant Secretary
DBGS60178 Special Assistant to the Chief of Staff to the Under Secretary
DBGS60181 Special Assistant to the Chief Financial Officer
DBGS60182 Confidential Assistant to the Director of the Institute of Education Sciences
DBGS60193 Special Assistant to the Deputy Chief of Staff for Operations
DBGS60194 Special Assistant to the Director, White House Initiative on Hispanic Education
DBGS60197 Confidential Assistant to the Special Assistant

Section 213.3318 Environmental Protection Agency

EPGS00922 Associate Assistant Administrator to the Assistant Administrator for Research and Development
EPGS03400 Program Advisor to the Associate Assistant Administrator for Public Affairs
EPGS03500 Senior Policy Advisor to the Deputy Assistant Administrator for Water
EPGS03603 Program Analyst to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS03605 Administrative Assistant to the Assistant Administrator for Enforcement and Compliance Assurance
EPGS03606 Press Secretary to the Associate Assistant Administrator for Public Affairs
EPGS03608 Deputy Scheduler to the Associate Assistant Administrator for Public Affairs
EPGS03612 Policy Advisor to the Administrator
EPGS03613 Senior Advance Coordinator to the Deputy Associate Administrator for the Office of Public Affairs
EPGS04002 Director, Press Advance and Special Assistant for Communications to the Deputy Associate Administrator for the Office of Public Affairs
EPGS04008 Chief of Staff to the Assistant Administrator for Air and Radiation
EPGS12701 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60050 Program Assistant to the Assistant Administrator for Air and Radiation
EPGS60054 Special Assistant to the Associate Administrator for Communications, Education and Media Relations
EPGS60060 Chief of Staff to the Assistant Administrator for Air and Radiation
EPGS60062 Public Liaison Specialist to the Associate Administrator for Communications, Education and Media Relations
EPGS60063 Confidential Assistant to the Deputy Administrator
EPGS60064 Associate Assistant Administrator to the Assistant Administrator for Prevention Pesticides and Toxics Substances
EPGS60065 Recycling Communications Advisor to the Deputy Director, Office of Solid Waste
EPGS60068 Associate Assistant Administrator to the Principal Deputy Assistant Administrator for Solid Waste and Emergency Response
EPGS60069 Special Assistant for Communications to the Assistant Administrator for Water
EPGS60071 Senior Advisor to the Assistant Administrator for International Activities
EPGS60074 Policy Analyst to the Assistant Administrator for Air and Radiation
EPGS60076 Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60077 Special Counsel to the General Counsel to the Associate General Counsel (Pesticides and Toxic Substances)
EPGS60078 Program Advisor (Advance Person) to the Administrator
EPGS60081 Director of Advance Staff to the Associate Administrator for Communications, Education and Media Relations
EPGS60082 Special Assistant to the Administrator
EPGS60089 Senior Advisor to the Chief Financial Officer

Section 213.3323 Overseas Private Investment Corporation

PQGS00015 Program Specialist to the President
PQGS03088 Confidential Assistant to the Confidential Assistant
PQGS60018 Executive Assistant to the President
PQGS60020 Executive Assistant to the Executive Vice President
PQGS60021 Confidential Assistant to the President

Section 213.3325 United States Tax Court

JCGS60040 Secretary (Confidential Assistant) to the Chief Judge
JCGS60041 Secretary (Confidential Assistant) to the Chief Judge
JCGS60043 Secretary (Confidential Assistant) to the Chief Judge
JCGS60044 Secretary (Confidential Assistant) to the Chief Judge
JCGS60045 Secretary (Confidential Assistant) to the Chief Judge
JCGS60046 Secretary (Confidential Assistant) to the Chief Judge
JCGS60047 Secretary (Confidential Assistant) to the Chief Judge
JCGS60049 Secretary (Confidential Assistant) to the Chief Judge
JCGS60050 Secretary (Confidential Assistant) to the Chief Judge
JCGS60051 Secretary (Confidential Assistant) to the Chief Judge
JCGS60052 Secretary (Confidential Assistant) to the Chief Judge
JCGS60053 Secretary (Confidential Assistant) to the Chief Judge
JCGS60054 Secretary (Confidential Assistant) to the Chief Judge
JCGS60055 Secretary (Confidential Assistant) to the Chief Judge
JCGS60056 Secretary (Confidential Assistant) to the Chief Judge
JCGS60058 Secretary (Confidential Assistant) to the Chief Judge
JCGS60059 Secretary (Confidential Assistant) to the Chief Judge
JCGS60060 Secretary (Confidential Assistant) to the Chief Judge
JCGS60061 Secretary (Confidential Assistant) to the Chief Judge
JCGS60062 Secretary (Confidential Assistant) to the Chief Judge
JCGS60063 Secretary (Confidential Assistant) to the Chief Judge
JCGS60064 Secretary (Confidential Assistant) to the Chief Judge
JCGS60065 Secretary (Confidential Assistant) to the Chief Judge

JCGS60066 Trial Clerk to the Chief Judge
JCGS60067 Trial Clerk to the Chief Judge
JCGS60068 Trial Clerk to the Chief Judge
JCGS60070 Trial Clerk to the Chief Judge
JCGS60071 Trial Clerk to the Chief Judge
JCGS60072 Trial Clerk to the Chief Judge
JCGS60074 Trial Clerk to the Chief Judge
JCGS60075 Trial Clerk to the Chief Judge
JCGS60078 Trial Clerk to the Chief Judge
JCGS60079 Trial Clerk to the Chief Judge
JCGS60080 Secretary (Confidential Assistant) to the Chief Judge
JCGS60082 Secretary (Confidential Assistant) to the Chief Judge

Section 213.3327 Department of Veterans Affairs

DVGS60004 Associate Dean, Veterans Administration Learning University/ Special Assistant to the Secretary to the Dean, Veterans Affairs Learning University
DVGS60011 Special Assistant to the Secretary of Veterans Affairs
DVGS60015 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60030 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60056 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60071 Senior Advisor to the Deputy Secretary of Veterans Affairs
DVGS60075 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60081 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60085 Special Assistant (Supervisory Regional Veterans Service Liaison Officer) to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60095 Special Assistant to the Assistant Secretary for Human Resources and Administration
DVGS60096 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60099 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs

Section 213.3328 Broadcasting Board of Governors

IBGS00009 Special Assistant to the Chairman, Broadcasting Board of Governors
IBGS00013 Chief of Staff to the Director Office of Cuba Broadcasting
IBGS00015 Senior Advisor to the Director
IBGS00016 Special Assistant to the Chairman, Broadcasting Board of Governors
IBGS00017 Special Assistant to the Chairman, Broadcasting Board of Governors

Section 213.3330 Securities and Exchange Commission

SEOT60002 Confidential Assistant to a Commissioner
SEOT60003 Confidential Assistant to a Commissioner
SEOT60004 Director of Legislative Affairs to the Director of Communications
SEOT60005 Confidential Assistant to a Commissioner
SEOT60008 Secretary (Office Automation) to the Chief Accountant
SEOT60009 Secretary to the General Counsel of the Commission
SEOT60011 Speech Writer to the Managing Executive for External Affairs
SEOT60014 Secretary to the Director, Division of Market Regulation
SEOT60016 Secretary to the Director, Division of Enforcement
SEOT60018 Secretary to the Director, Division of Investment Management
SEOT60019 Secretary to the Director
SEOT60029 Secretary to the Director, Division of Market Regulation
SEOT60032 Director of Public Affairs to the Chairman
SEOT60033 Legislative Affairs Specialist to the Director of Legislative Affairs
SEOT60034 Public Affairs Specialist to the Director of Public Affairs
SEOT60051 Managing Executive for External Affairs to the Chairman
SEOT60056 Legislative Affairs Specialist to the Director of Communications

Section 213.3331 Department of Energy

DEGS00291 Deputy Chief of Staff to the Deputy Secretary of Energy
DEGS00299 Senior Policy Advisor to the Assistant Secretary for International Affairs
DEGS00305 Senior Policy Advisor to the Director, Office of Civilian Radioactive Waste Management
DEGS00317 Senior Policy Advisor to the Secretary, Department of Energy
DEGS00318 Advisor, Legislative Affairs to the Assistant Secretary (Conservation and Renewable Energy)
DEGS00321 Director, Office of Climate Change Programs to the Deputy Assistant Secretary for National Energy Policy
DEGS00324 Special Assistant to the Director, Office of Scheduling and Advance
DEGS00329 Congressional Relations Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration
DEGS00330 Confidential Assistant to the Assistant Secretary for Environment, Safety and Health
DEGS00334 Special Assistant to the Secretary to the Secretary, Department of Energy
DEGS00341 Confidential Assistant to the Deputy Administrator for Defense Programs, National Nuclear Security Administration
DEGS00342 Trip Coordinator to the Director, Office of Scheduling and Advance
DEGS00346 Communications Assistant to the Chief of Staff
DEGS00347 Special Assistant to the Assistant Secretary of Energy (Environmental Management)
DEGS00348 Policy Advisor to the Director, Office of Science
DEGS00380 Assistant to the Chief of Staff and Congressional Specialist to the Assistant Secretary for International Affairs
DEGS00381 Public Affairs Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration
DEGS00385 Senior Policy Advisor to the Director, Public Affairs
DEGS00387 Trip Coordinator to the Director, Office of Scheduling and Advance
DEGS00391 Policy Advisor to the Assistant Secretary for Fossil Energy
DEGS00392 Chief of Staff to the Principal Deputy Assistant Secretary
DEGS00393 Policy Advisor to the Director Office of Worker and Community Transition
DEGS00394 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00395 Special Assistant to the Secretary, Department of Energy
DEGS00396 Senior Scheduler to the Director, Office of Scheduling and Advance
DEGS00397 Deputy Director of Scheduling and Advance to the Director, Office of Scheduling and Advance

DEGS00399 Special Assistant to the Director Office of Economic Impact and Diversity
DEGS00401 Special Assistant to the Director, Office of Scheduling and Advance
DEGS00402 Advance Representative to the Director, Office of Scheduling and Advance
DEGS00403 Special Assistant to the Chief of Staff
DEGS00404 Senior Policy Advisor to the Associate Deputy Secretary of Energy
DEGS00405 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00406 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00407 Daily Scheduler to the Director, Office of Scheduling and Advance
DEGS00408 Director, Office of Communications and Outreach to the Principal Deputy Assistant Secretary
DEGS00409 Special Assistant to the Director, Public Affairs
DEGS00414 Deputy Director for Public Affairs to the Director, Public Affairs
DEGS00416 Deputy Assistant Secretary for Environment and Science to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00418 Special Assistant to the Chief of Staff
DEGS00419 Special Assistant to the Secretary and Deputy White House Liaison
DEGS00420 Special Assistant to the Director, Public Affairs
DEGS00421 Deputy Assistant Secretary for Budget and Appropriations to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00422 Deputy Director for Advance to the Director, Office of Scheduling and Advance
DEGS60121 Special Assistant to the Director, Office of Scheduling and Advance
DEGS60134 Special Assistant to the Assistant Secretary for Fossil Energy
DEGS60140 Senior Advisor to the Director, Nuclear Energy
DEGS60212 Senior Advisor, Communications to the Assistant Secretary (Conservation and Renewable Energy)
DEGS60221 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management)
DEGS60222 Special Assistant to the Secretary, Department of Energy
DEGS60225 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for International Affairs
DEGS60226 Senior Advisor to the Secretary, Department of Energy
DEGS60233 Special Assistant to the Assistant Secretary for International Affairs
DEGS60238 Deputy Director to the Director Office of Economic Impact and Diversity
DEGS60250 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS60253 Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS60254 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management)
DEGS60256 Intergovernmental Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS60265 Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science
DEGS60276 Senior Policy Advisor to the Director, Office of Science
DEGS60278 Special Assistant to the Director Office of Economic Impact and Diversity

Section 213.3331 Federal Energy Regulatory Commission

DRGS51517 Policy Adviser to a Member of the Commission to the Member-Federal Energy Regulatory Commission
DRGS60001 Regulatory Policy Analyst to the Director, Markets, Tariffs, and Rates
DRGS60003 Confidential Assistant to the Member-Federal Energy Regulatory Commission

Section 213.3332 Small Business Administration

SBGS60003 National Director for Native American Affairs to the Deputy Associate Deputy Administrator for Entrepreneurial Development
SBGS60004 Senior Advisor for Women's Issues to the Deputy Administrator
SBGS60010 Senior Advisor to the Chief Operating Officer and Chief Information Officer
SBGS60011 Deputy Associate Administrator to the Associate Administrator for Communications/Public Liaison
SBGS60018 Special Assistant to the Administrator
SBGS60019 Special Assistant to the Deputy Administrator to the Deputy Administrator
SBGS60030 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development
SBGS60060 Special Assistant to the Associate Deputy Administrator for Management and Administration
SBGS60084 Director of International Trade to the Administrator
SBGS60098 Special Assistant to the Administrator to the Associate Administrator for Communications/Public Liaison
SBGS60112 Special Assistant to the Deputy Administrator to the Deputy Administrator
SBGS60124 Special Assistant to the Associate Administrator for Congressional and Legislative Affairs
SBGS60143 Policy Advisor to the Associate Administrator for Communications/Public Liaison
SBGS60151 Director of External Affairs to the Special Assistant (Scheduling)
SBGS60153 Deputy Associate Administrator for Intergovernmental Affairs to the Associate Administrator for Field Operations
SBGS60154 Deputy Director, External Affairs to the Director of External Affairs
SBGS60160 Senior Advisor to the Assistant Administrator for International Trade to the District Director
SBGS60169 Regional Administrator, Region I, Boston, Massachusetts to the Associate Administrator for Field Operations
SBGS60170 Regional Administrator, Region VIII, Denver Colorado to the Assistant Inspector General for Inspections and Evaluation
SBGS60171 Regional Administrator, Region VII, Kansas City, Missouri to the District Director
SBGS60173 Regional Administrator, Region VI, Dallas, Texas to the District Director
SBGS60174 Regional Administrator to the Associate Administrator for Field Operations
SBGS60175 Regional Administrator to the District Director
SBGS60181 Assistant Administrator for Field Operations to the Associate Administrator for Field Operations
SBGS60188 Regional Administrator, Region IX, San Francisco to the Administrator
SBGS60189 Regional Administrator, Region 10, Seattle, Washington to the Associate Administrator for Field Operations
SBGS60190 Deputy Chief of Staff to the Chief of Staff
SBGS60356 Special Assistant to the Associate Administrator for Strategic Alliances
SBGS60531 Senior Advisor to the Associate Deputy Administrator for Capital Access

SBGS60533 Associate Administrator for Strategic Alliances to the Administrator
SBGS60535 Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development
SBGS60540 Assistant Administrator for the Office of Policy and Planning to the Administrator
SBGS60543 Associate Administrator for Policy to the Administrator
SBGS60546 Senior Advisor to the Ombudsman to the National Ombudsman
SBGS60550 Assistant Administrator for Congressional and Legislative Affairs to the Associate Administrator for Congressional and Legislative Affairs
SBGS60551 Assistant Administrator for Congressional and Legislative Affairs to the Associate Administrator for Congressional and Legislative Affairs
SBGS60552 Assistant Administrator to the Associate Administrator for Congressional and Legislative Affairs

Section 213.3333 Federal Deposit Insurance Corporation

FDOT00003 General Counsel to the Chairman of the Board of Directors (Director)
FDOT00008 Deputy to the Chairman of the Board of Directors (Director)
FDOT00010 Chief of Staff to the Chairman of the Board of Directors (Director)
FDOT00011 Special Advisor to the Chairman of the Board of Directors (Director)

Section 213.3334 Federal Trade Commission

FTGS60001 Director, Office of Public Affairs to the Chairman
FTGS60002 Congressional Liaison Specialist to the Director, Office of Congressional Relations
FTGS60006 Congressional Liaison Specialist to the Chairman
FTGS60026 Confidential Assistant to a Commissioner
FTGS60027 Confidential Assistant to a Commissioner

Section 213.3337 General Services Administration

GSGS00063 Director of Marketing to the Deputy Associate Administrator for Communications
GSGS00084 Special Assistant to the Regional Administrator, Region VI Kansas City
GSGS00087 Special Assistant to the Regional Administrator to the Regional Administrator, (Region IX-San Francisco)
GSGS00099 Senior Advisor to the Regional Administrator, Region 3, Philadelphia, Pennsylvania
GSGS00122 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00130 Special Assistant to the Regional Administrator to the Regional Administrator, Region 7, Fort Worth, Texas
GSGS00132 Special Assistant to the Regional Administrator to the Regional Administrator, Region 10, Auburn, Washington
GSGS00133 Congressional Relations Analyst to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00150 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00156 Confidential Assistant to the Administrator
GSGS00157 Chief of Staff to the Commissioner, Public Buildings Service
GSGS01317 Associate Administrator for Performance Improvement to the Administrator
GSGS60079 Senior Advisor to the Regional Administrator, Region 2, New York
GSGS60082 Senior Advisor to the Regional Administrator, Region 4, Atlanta, Georgia
GSGS60094 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60095 White House Liaison to the Chief of Staff
GSGS60100 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60113 Special Assistant to the Regional Administrator, Region 1, Boston
GSGS60119 Senior Advisor to the Deputy Regional Administrator
GSGS60127 Associate Administrator for Small Business Utilization to the Administrator
GSGS60131 Director of External Affairs to the Deputy Associate Administrator for Communications

Section 213.3338 Federal Communications Commission

FCGS03051 Deputy Director, Office of Media Relations to the Chief of Staff
FCGS60005 Special Assistant to the Director, Office of Legislative Affairs

Section 213.3339 United States International Trade Commission

TCGS00007 Staff Assistant to a Commissioner
TCGS00012 Confidential Assistant to a Commissioner
TCGS00013 Staff Assistant (Economics) to the Chairman
TCGS00031 Executive Assistant to a Commissioner
TCGS00033 Staff Assistant to a Commissioner
TCGS60015 Executive Assistant to the Vice Chairman
TCGS60018 Staff Assistant (Legal) to a Commissioner
TCGS60019 Senior Economist to a Commissioner
TCGS60036 Executive Assistant to the Chairman
TCGS60100 Senior Economist to the Chairman
TCGS60101 Executive Assistant to the Vice Chairman

Section 213.3340 National Archives and Records Administration

NQGS60003 Presidential Diarist to the Archivist of the United States

Section 213.3342 Export-Import Bank

EBGS60054 Special Assistant to the Vice President—Operations
EBSL00006 General Counsel to the President and Chairman

Section 213.3343 Farm Credit Administration

FLOT00028 Director, Congressional and Legislative Affairs to the Chairman, Farm Credit Administration Board
FLOT00047 Director, Office of Policy and Analysis to the Chairman, Farm Credit Administration Board
FLOT00051 Chief Operating Officer to the Chairman, Farm Credit Administration Board
FLOT00053 Executive Assistant to the Chairman of the Board, Farm Credit Administration Board
FLOT00080 Executive Assistant to the Chairman, Farm Credit Administration Board
FLOT60015 Public Affairs Specialist to the Director, Congressional and Legislative Affairs

Section 213.3344 Occupational Safety and Health Review Commission

SHGS00002 Confidential Assistant to the Commission Member (Chairman)
SHGS00003 Confidential Assistant to the Commission Member
SHGS60008 Counsel to a Commissioner to the Commission Member

Section 213.3346 Selective Service System

SSGS00001 Public Affairs Specialist to the Director

Section 213.3348 National Aeronautics and Space Administration

NNGS00021 Public Affairs Specialist to the Senior Public Affairs Advisor

NNGS00024 Writer—Editor to the Assistant Administrator for Public Affairs
NNGS02317 Special Assistant to the Inspector General
NNGS30115 White House Liaison to the Administrator
NNGS60018 Confidential Assistant to the Administrator
NNGS60020 Writer-Editor to the Assistant Administrator for Public Affairs
NNGS60022 Media Relations Specialist to the Assistant Administrator for Public Affairs

Section 213.3351 Federal Mine Safety and Health Review Commission

FRGS60017 Confidential Assistant to the Chairman
FRGS60024 Confidential Assistant to the Chairman

Section 213.3353 Merit Systems Protection Board

MPGS60010 Confidential Assistant to the Chairman
MPGS60012 Senior Advisor to a Board Chairman

Section 213.3355 Social Security Administration

SZGS00010 Special Assistant to the Deputy Commissioner for Communications to the Deputy Commissioner for Communications
SZGS00011 Special Assistant to the Deputy Commissioner to the Deputy Commissioner of Social Security
SZGS60007 Special Assistant to a Commissioner
SZGS60008 Special Assistant to the Chief of Staff
SZGS60009 Executive Assistant to the Deputy Commissioner for Communications
SZGS60012 Executive Editor to the Associate Commissioner for Retirement Policy

Section 213.3356 Commission on Civil Rights

CCGS00017 Special Assistant to the Commissioner
CCGS60001 Special Assistant to the Vice-Chairman
CCGS60011 Special Assistant to a Commissioner
CCGS60012 Special Assistant to the Commissioner to the Chairman
CCGS60013 Special Assistant to a Commissioner
CCGS60016 Special Assistant to a Commissioner
CCGS60029 Special Assistant to Commissioner to a Commissioner
CCGS60031 Special Assistant to the Staff Director
CCGS60033 Special Assistant to a Commissioner

Section 213.3357 National Credit Union Administration

CUOT01158 Director, Public and Congressional Affairs to the Chairman
CUOT01191 Executive Assistant to the Vice Chair
CUOT01192 Executive Assistant to a Member
CUOT60009 Staff Assistant to the Chairman, National Credit Union Administration Board
CUOT60018 Special Assistant for Legislative Affairs to the Chairman, National Credit Union Administration Board
CUOT60026 Special Assistant for Public Affairs to the Chairman, National Credit Union Administration Board

Section 213.3360 Consumer Product Safety Commission

PSGS00066 Supervisory Public Affairs Specialist to the Executive Director
PSGS60001 Special Assistant (Legal) to a Commissioner
PSGS60003 Special Assistant (Legal) to the Chairman, Consumer Product Safety Commission
PSGS60006 Executive Assistant to the Chairman, Consumer Product Safety Commission
PSGS60007 Director, Office of Congressional Relations to the Chairman, Consumer Product Safety Commission
PSGS60012 Executive Assistant to the Chairman, Consumer Product Safety Commission
PSGS60014 General Counsel to the General Counsel
PSGS60050 Executive Assistant to a Commissioner
PSGS60061 Executive Assistant to a Commissioner
PSGS60062 Special Assistant (Legal) to a Commissioner
PSGS60063 Special Assistant (Legal) to a Commissioner

Section 213.3365 Chemical Safety and Hazard Investigation Board

FJGS60001 Special Assistant to the Chief Operating Officer

Section 213.3367 Federal Maritime Commission

MCGS60003 Counsel to the Commissioner to a Member
MCGS60006 Counsel to the Commissioner to a Member
MCGS60042 Counsel to a Member

Section 213.3370 Millennium Challenge Corporation

MCGS00001 Executive Assistant to the Chief Executive Officer

Section 213.3373 Trade and Development Agency

TDGS00004 Public Affairs Specialist to the Director
TDGS60002 Congressional Liaison to the Director

Section 213.3376 Appalachian Regional Commission

APGS00003 Confidential Policy Advisor to the Federal Co-Chairman
APGS00004 Confidential Policy Advisor to the Federal Co-Chairman

Section 213.3377 Equal Employment Opportunity Commission

EEGS60004 Confidential Assistant to the Legal Counsel
EEGS60008 Confidential Assistant to the Chairman, Equal Employment Opportunity Commission
EEGS60032 Senior Advisor to the Member, Equal Employment Opportunity Commission

Section 213.3379 Commodity Futures Trading Commission

CTGS60001 Administrative Assistant to the Chief of Staff
CTGS60002 Administrative Assistant to the Chairperson
CTGS60004 Administrative Assistant to a Commissioner
CTGS60012 Special Assistant to a Commissioner
CTGS60014 Special Assistant to a Commissioner
CTOT00030 Chief of Staff to the Chairperson
CTOT00033 Director, Office of External Affairs to the Chairperson

Section 213.3382 National Endowment for the Arts

NAGS00004 Director of Development to the Senior Deputy Chairman
NAGS00025 General Counsel to the Chairman National Endowment for the Arts
NAGS00053 Director of Research and Analysis to the Chairman National Endowment for the Arts
NAGS00074 Speechwriter to the Chairman National Endowment for the Arts
NAGS60049 Deputy Congressional Liaison to the Director, Office of Government Affairs
NAGS60077 Director of Communications to the Chairman National Endowment for the Arts
NASL00001 Executive Director, Presidents Committee on the Arts and Humanities to the Chairman National Endowment for the Arts

Section 213.3384 Department of Housing and Urban Development

DUGS00020 Deputy Assistant Secretary for Policy Development to the

Assistant Secretary for Policy Development and Research
DUGS00021 Staff Assistant to the Secretary, Housing and Urban Development
DUGS00029 Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
DUGS00030 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS00031 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS00035 Special Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS00041 Advance Coordinator to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS00044 Special Assistant to the Deputy Secretary, Housing and Urban Development
DUGS00370 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS00445 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS60037 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60060 Special Assistant for Office Operations to the Assistant Deputy Secretary for Field Policy and Management
DUGS60066 Special Assistant to the General Counsel
DUGS60120 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60137 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60195 Staff Assistant to the Deputy Assistant Secretary for Economic Affairs
DUGS60205 Deputy Assistant Secretary for Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60206 Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60216 Deputy Assistant Secretary for Special Needs to the Assistant Deputy Secretary for Field Policy and Management
DUGS60224 Regional Director, Seattle, Washington to the Deputy Secretary, Housing and Urban Development
DUGS60238 Special Assistant to the Regional Director to the Regional Director
DUGS60259 Administrator of Manufactured Housing Programs to the Assistant Secretary for Community Planning and Development
DUGS60260 Staff Assistant to the Deputy Assistant Secretary for Public Housing and Voucher Programs
DUGS60263 Special Assistant to the Assistant Secretary for Public Affairs
DUGS60266 Staff Assistant to the President, Government National Mortgage Association
DUGS60272 Deputy Assistant Secretary for Economic Affairs to the Regional Director
DUGS60276 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60279 Associate Deputy Assistant Secretary for Fair Housing and Equal Opportunity to the Assistant Secretary for Fair Housing and Equal Opportunity
DUGS60281 Special Projects Officer to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60288 Congressional Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60311 Special Assistant for Housing Cooperatives to the Deputy Assistant Secretary for Multifamily Housing
DUGS60317 Special Assistant to the Regional Director to the Regional Director
DUGS60335 Assistant to the Deputy Assistant Secretary for Economic Development to the Deputy Assistant Secretary for Economic Affairs
DUGS60344 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60361 Regional Director, Denver, Colorado to the Assistant to the Secretary/White House Liaison
DUGS60366 Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing to the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing
DUGS60387 Scheduling Coordinator to the Special Assistant for Office Operations
DUGS60396 Staff Assistant to the Special Assistant for Office Operations
DUGS60417 Special Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60419 Special Assistant (Speech Writer) to the Assistant Secretary for Community Planning and Development
DUGS60423 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60431 Regional Director, Kansas City, Kansas to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60438 Director, Office of Insured Health Care Facilities to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60458 Legislative Assistant to the Deputy Assistant Secretary
DUGS60460 Assistant to the Secretary and White House Liaison to the Deputy Secretary, Housing and Urban Development
DUGS60461 Staff Assistant to the Director of Executive Scheduling
DUGS60462 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS60463 Executive Secretary to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60464 Special Projects Coordinator to the Regional Director
DUGS60472 Deputy Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60489 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60522 Deputy Assistant Secretary for Special Initiatives to the Secretary, Housing and Urban Development
DUGS60525 Staff Assistant to the Secretary, Housing and Urban Development
DUGS60529 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60534 Deputy Director to the Director, Center for Faith Based and Community Initiatives
DUGS60542 Deputy White House Liaison to the Secretary, Housing and Urban Development
DUGS60583 Director, Center for Faith Based and Community Initiatives to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60595 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60601 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations

Section 213.3391 Office of Personnel Management

PMGS00025 Special Assistant to the Director, Office of Communications
PMGS00029 Special Assistant to the Director, Office of Communications
PMGS00030 Attorney Advisor to the General Counsel
PMGS00033 Chief, Office of Senate Affairs to the Director, Office of Congressional Relations
PMGS00034 Scheduler and Briefing Operations Coordinator to the Chief of Staff

PMGS00035 Deputy Chief of Staff to the Chief of Staff
PMGS00036 Special Assistant to the Director, Office of Communications
PMGS00037 Chief, Office of House Affairs to the Director, Office of Congressional Relations
PMGS00038 Confidential Assistant to the Director, Office of Congressional Relations
PMGS00039 Special Assistant to the Chief of Staff
PMGS00040 Chief of Administration and Confidential Assistant to the Director, Office of Congressional Relations
PMGS00041 Special Assistant (Senior Speech Writer) to the Director, Office of Communications
PMGS00043 White House Liaison to the Chief of Staff
PMGS00044 Executive Officer to the Director
PMGS00045 Special Assistant to the Chief of Staff
PMGS00047 Special Assistant to the Deputy Director
PMGS60004 Legislative Assistant to the Chief, Office of House Affairs
PMGS60010 Special Initiatives Coordinator to the Director, Office of Communications
PMGS60013 Special Assistant to the Director, Office of Communications
PMGS60017 Special Counselor to the General Counsel
PMGS60018 Special Assistant to the Director, Office of Communications
PMGS60022 Deputy Director, Office of Communications to the Director, Office of Communications
PMGS60024 Policy Coordinator to the Director

Section 213.3392 Federal Labor Relations Authority

FAGS60022 Executive Assistant to the Chairman

Section 213.3393 Pension Benefit Guaranty Corporation

BGGS60003 Assistant Executive Director for Legislative Affairs to the Executive Director
BGSL00053 Director, Communications and Public Affairs Department to the Executive Director

Section 213.3394 Department of Transportation

DTGS60003 Special Assistant to the Secretary and Deputy Director for Scheduling and Advance to the Secretary
DTGS60069 Director, Office of Communications and Senior Policy Advisor to the Administrator
DTGS60070 Special Assistant to the Assistant Secretary for Governmental Affairs
DTGS60128 Special Assistant to the Administrator
DTGS60147 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DTGS60151 Assistant to the Secretary for Policy to the Secretary
DTGS60159 Special Assistant to the Associate Administrator for Policy
DTGS60192 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DTGS60198 Special Assistant to the Chief Counsel
DTGS60229 Special Assistant to the Administrator
DTGS60237 Deputy Director for Communications to the Assistant to the Secretary and Director of Public Affairs
DTGS60239 Director, Office of Congressional and Public Affairs to the Administrator
DTGS60254 White House Liaison to the Chief of Staff
DTGS60258 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60268 Speechwriter to the Associate Director for Speechwriting
DTGS60277 Staff Assistant to the Administrator
DTGS60279 Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs
DTGS60285 Special Assistant to the Administrator
DTGS60292 Associate Director for Intergovernmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60295 Executive Assistant to the Associate Deputy Secretary
DTGS60301 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60311 Scheduling/Advance Assistant to the Director for Scheduling and Advance
DTGS60316 Special Assistant to the Assistant Secretary for Aviation and International Affairs
DTGS60317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs
DTGS60324 Director for Scheduling and Advance to the Chief of Staff
DTGS60338 Special Assistant to the Associate Administrator for Policy
DTGS60341 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DTGS60355 Director, Drug Enforcement and Program Compliance to the Chief of Staff
DTGS60357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DTGS60358 Special Assistant to the Director for Scheduling and Advance
DTGS60363 Director of Policy and Program Support to the Administrator
DTGS60365 Special Assistant to the Assistant Secretary for Transportation Policy
DTGS60368 Special Assistant to the Administrator for Intergovernmental Affairs
DTGS60369 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60460 Director of Public Affairs to the Administrator
DTOT60366 Special Assistant to the Deputy Administrator for National Parks Air Tour Management

Section 213.3396 National Transportation Safety Board

TBGS60025 Special Assistant to the Vice Chairman
TBGS60030 Director of Government and Industry Affairs to the Chairman
TBGS60032 Special Assistant to a Member
TBGS60033 Assistant to the Director, National Transportation Safety Board Academy for Special Projects to the Chairman
TBGS60102 Special Assistant to the Vice Chairman

Section 213.3397 Federal Housing Finance Board

FBOT00003 Special Assistant for External Affairs to the Chairman
FBOT60001 Special Assistant to the Chairman
FBOT60004 Chief Counsel to the Board Director
FBOT60006 Special Assistant to the Board Director
FBOT60007 Special Assistant to the Board Director
FBOT60009 Counsel to the Board Director

Section 213.3382 National Endowment for the Humanities

NHGS60060 General Counsel to the Chairman
NHGS60065 Special Assistant to the Chairman
NHGS60075 Director of Communications to the Deputy Chairman
NHGS60076 Director, We the People Office to the Deputy Chairman

Section 213.3388 Presidents Commission on White House Fellowships

WHGS00010 Staff Assistant (Office Automation) to the Director, President's Commission on White House Fellowships

WHGS00012 Staff Assistant (Office Automation) to the Director, President's Commission on White House Fellowships

WHGS00013 Education Director to the Director, President's Commission on White House Fellowships

Section 213.3389 National Mediation Board

NMGS60053 Confidential Assistant to a Member

NMGS60054 Confidential Assistant to a Member

NMGS60056 Confidential Assistant to the Chairman

Authority: 5 U.S.C. 3301 and 3302; E.O.10577, 3 CFR 1954–1958 Comp., p. 18.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 05–533 Filed 1–11–05; 8:45 am]

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Federal Register

Wednesday,
January 12, 2005

Part V

General Services Administration

41 CFR Part 102–42

Federal Management Regulation; Change in Consumer Price Index Minimal Value; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–42

[FMR Amendment 2005–1; FMR Case 2004–102–8]

RIN 3090–AI02

Federal Management Regulation; Change in Consumer Price Index Minimal Value

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: Public Law 95–105 requires that at 3-year intervals following January 1, 1981, minimal value for reporting foreign gifts be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to mean $305 or less as of January 1, 2005.

DATES: *Effective Date:* This final rule is effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Director, Personal Property Management Policy Division at (202) 501–3828. Please cite FMR case 2004–102–8, Amendment 2005–1.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–42

Excess government property, Government property management.

Dated: January 6, 2005.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–42 as set forth below:

PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

■ 1. The authority citation for part 102–42 is revised to read as follows:

Authority: 40 U.S.C. 121; 5 U.S.C. 7342.

§ 102–42.10 [Amended]

■ 2. Section 102–42.10 is amended in the introductory text of the definition Minimal value by removing ''$85'' and adding ''$305'' in its place, and removing the colon and adding an em dash in its place.

[FR Doc. 05–596 Filed 1–11–05; 8:45 am]

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Part VI

The President

Proclamation 7860—To Extend Nondiscriminatory Trade Treatment (Normal Trade Relations Treatment) to the Products of Armenia

Executive Order 13369—President's Advisory Panel on Federal Tax Reform

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Presidential Documents

Title 3—

The President

Proclamation 7860 of January 7, 2005

To Extend Nondiscriminatory Trade Treatment (Normal Trade Relations Treatment) to the Products of Armenia

By the President of the United States of America

A Proclamation

1. Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting market reforms and on February 5, 2003, Armenia acceded to the World Trade Organization (WTO). The extension of unconditional normal trade relations treatment to the products of Armenia will permit the United States to avail itself of all rights under the WTO with respect to Armenia. Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2431 *et seq.*).

2. Pursuant to section 2001(b) of Public Law 108–429, 118 Stat. 2588, and having due regard for the findings of the Congress in section 2001(a) of said law, I hereby determine that chapter 1 of title IV of the 1974 Act (19 U.S.C. 2431–2439) should no longer apply to Armenia.

3. Section 604 of the 1974 Act (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

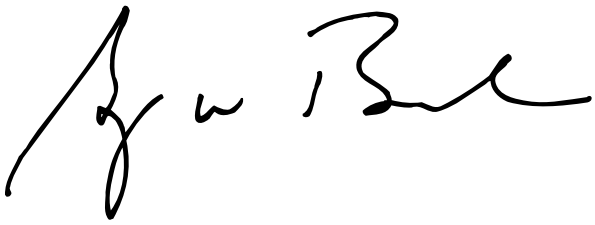
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 2001(b) of Public Law 108–429, and section 604 of the 1974 Act, do proclaim that:

(1) Nondiscriminatory trade treatment (normal trade relations treatment) shall be extended to the products of Armenia, which shall no longer be subject to chapter 1 of title IV of the 1974 Act.

(2) The extension of nondiscriminatory treatment to products of Armenia shall be effective as of the date of signature of this proclamation.

(3) All provisions of previous proclamations and executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of January, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–770
Filed 1–11–05; 9:02 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13369 of January 7, 2005

President's Advisory Panel on Federal Tax Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to assist in reforming the Federal Internal Revenue Code to benefit all Americans, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Advisory Panel on Federal Tax Reform (Advisory Panel).

Sec. 2. *Membership.* (a) The Advisory Panel shall be composed of up to nine members appointed by the President.

(b) The President shall designate one member of the Advisory Panel to serve as Chair and one member to serve as Vice Chair.

Sec. 3. *Purpose.* The purpose of the Advisory Panel shall be to submit to the Secretary of the Treasury in accordance with this order a report with revenue neutral policy options for reforming the Federal Internal Revenue Code. These options should:

(a) simplify Federal tax laws to reduce the costs and administrative burdens of compliance with such laws;

(b) share the burdens and benefits of the Federal tax structure in an appropriately progressive manner while recognizing the importance of homeownership and charity in American society; and

(c) promote long-run economic growth and job creation, and better encourage work effort, saving, and investment, so as to strengthen the competitiveness of the United States in the global marketplace.

At least one option submitted by the Advisory Panel should use the Federal income tax as the base for its recommended reforms.

Sec. 4. *Administration.* (a) The Department of the Treasury shall provide, to the extent permitted by law, administrative support and funding for the Advisory Panel. The Advisory Panel is established within the Department of the Treasury for administrative purposes only.

(b) The Chair of the Advisory Panel shall convene and preside at the meetings of the Advisory Panel, determine its agenda after consultation with the Vice Chair, and direct its work. The Advisory Panel shall have a staff headed by an Executive Director who shall be selected by the President and report to the Chair.

(c) Members of the Advisory Panel shall serve without compensation for their work on the Advisory Panel. Members of the Advisory Panel who are not officers or employees in the executive branch, while engaged in the work of the Advisory Panel, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701 through 5707), consistent with the availability of funds.

(d) Consistent with applicable law, heads of executive departments and agencies shall provide to the Advisory Panel such assistance, including assignment or detail of personnel, and information as may be necessary for the Advisory Panel to perform its functions.

(e) The Advisory Panel may conduct meetings in appropriate locations throughout the United States to obtain information and advice from Americans of diverse backgrounds and experience and from a diverse range of

American entities, including large and small for-profit and non-profit organizations, State, local, and tribal governments, and from other individuals and entities as appropriate. Public hearings shall be held at the call of the Chair.

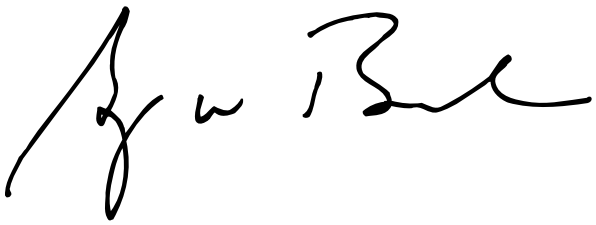
(f) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the Advisory Panel, any functions of the President under that Act, except for those in section 6 of that Act, shall be performed by the Secretary of the Treasury in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 5. *Report.* The Advisory Panel shall submit to the Secretary of the Treasury a report containing policy options in accordance with section 3 of this order as soon as practicable, but not later than July 31, 2005.

Sec. 6. *Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

Sec. 7. *Termination.* The Advisory Panel shall terminate 30 days after submitting its report pursuant to section 5 of this order.



THE WHITE HOUSE,
January 7, 2005.

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A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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