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

WHEN: Tuesday, April 19, 2005
9:00 a.m.–Noon—(SESSION FULL)

Tuesday, May 17, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1001

[Docket No. AO-14-A70; DA-02-01]

Milk in the Northeast Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations pertaining to the Northeast Federal milk order. More than the required number of producers for the Northeast marketing area approved the issuance of the final order amendments.

DATES: *Effective Date:* June 1, 2005.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: This document amends the pooling and related provisions of the Northeast Federal milk order. Specifically, this final rule permanently adopts provisions that will establish year-round supply plant performance standards, exclude milk received by supply plants from producers not eligible to be pooled on the Northeast order from supply plant performance standards, remove the “split-plant” provision, establish a one-day “touch base” standard, establish explicit diversion limits for pool plants, prohibit the ability to simultaneously pool the same milk on the order and a marketwide pool administered by another government entity, and grants authority to the Market Administrator to adjust the touch-base and diversion limit

standards as market conditions warrant. Additional amendments that amend reporting and payment date provisions are also adopted.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 request modification or exemption from such order by filing 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. A handler 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 handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this final rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. For the purposes of determining which dairy farms are “small businesses,” the \$750,000 per year criterion was used to

establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler'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.

In September 2002, the time of the hearing, there were 16,715 producers pooled on and 143 handlers regulated by the Northeast order. Of these, 97 percent of the producers and 71 percent of the handlers would be considered small businesses. The adoption of the proposed standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving, the fluid milk needs of the Northeast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and to determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The amendments to the reporting and payment date provisions serve to streamline and simplify handler payments to the market administrator. The criteria established in the amended pooling standards and reporting and payment date provisions are applied in an equal fashion to both large and small businesses. Therefore, the 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 amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements are necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The 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.

Prior documents in this proceeding:

Notice of Hearing: Issued July 26, 2002; published August 1, 2002 (67 FR 49887).

Supplemental Notice of Hearing:

Issued August 14, 2002; published August 16, 2002 (67 FR 53522).

Recommended Decision: Issued

March 17, 2004; published March 25, 2004 (69 FR 15562).

Final Decision: Issued January 14, 2005; published January 31, 2005 (70 FR 4932).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast order:

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Northeast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Northeast order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand

for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Northeast order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Northeast order effective June 1, 2005. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to the Northeast order are known to handlers. The final decision containing the proposed amendments to the order was issued on January 14, 2005.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective June 1, 2005. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) or the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Northeast order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined by the order as hereby amended;

(3) The issuance of the order amending the Northeast order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1001

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of

milk in the Northeast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

■ 1. The authority citation for 7 CFR Part 1001 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 1001.7 is amended by:

■ a. Revising paragraphs (c)(1) and (c)(2).

■ b. Removing paragraph (c)(3).

■ c. Redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(3) and (c)(4).

■ d. Revising paragraphs (e)(1) and (e)(2).

■ e. Adding “and” at the end of paragraph (h)(5).

■ f. Removing “; and” from the end of paragraph (h)(6) and adding a period in its place.

■ g. Removing paragraph (h)(7).

The revisions read as follows:

§ 1001.7 Pool plant.

* * * * *

(c) * * *

(1) In each of the months of January through August and December, such shipments and transfers to distributing plants must not equal less than 10 percent of the total quantity of milk (except the milk of a producer described in § 1001.12(b)) that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) In each of the months of September through November, such shipments and transfers to distributing plants must equal not less than 20 percent of the total quantity of milk (except the milk of a producer described in § 1001.12(b)) that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

* * * * *

(e) * * *

(1) At least one of the plants in the unit qualifies as a pool distributing plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process at least 60 percent of monthly receipts of producer milk only as Class I or Class II products and must be located in the Northeast marketing area, as defined in § 1001.2, in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant(s) included in the unit; and

* * * * *

■ 3. Section 1001.13 is amended by:

■ a. Revising paragraph (d)(1).

■ b. Redesignating paragraph (d)(2) as paragraph (d)(3).

■ c. Adding paragraphs (d)(2), (d)(4), (d)(5) and (e).

The revision and additions read as follows:

§ 1001.13 Producer milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless one day's milk production of such dairy farmer was physically received as producer milk and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless milk of the dairy farmer has been physically received as producer milk at a pool plant during the month;

(2) Of the total quantity of producer milk received during the month (including diversion but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 80 percent during each of the months of September through November and 90 percent during each of the months of January through August and December. In the event that a handler causes the milk of a producer to be over diverted, a dairy farmer will not lose producer status;

* * * * *

(4) Any milk diverted in excess of the limits set forth in paragraph (d)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(5) The delivery day requirement and the diversion percentages in paragraphs (d)(1) and (d)(2) of this section may be increased or decreased by the Market Administrator if the Market Administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Market Administrator shall investigate the need for the revision either on the Market Administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that a revision might be appropriate, the Market

Administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage or delivery day requirement must be issued in writing at least one day before the effective date.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of another government entity.

■ 4. In § 1001.30, the introductory text is revised to read as follows:

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the Market Administrator's office receives the report on or before the 10th day after the end of the month, in the detail and on prescribed forms, as follows:

* * * * *

■ 5. In § 1001.62, the introductory text is revised and a new paragraph (h) is added to read as follows:

The revision and addition reads as follows:

§ 1001.62 Announcement of producer prices.

On or before the 14th day after the end of the month, the Market Administrator shall announce the following prices and information:

* * * * *

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the Market Administrator may have up to two additional business days to announce the producer price differential and the statistical uniform price.

* * * * *

■ 6. In § 1001.71, the introductory text is revised to read as follows:

§ 1001.71 Payments to the producer—settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the Market Administrator no later than two days after the announcement of the producer price differential and the statistical uniform price pursuant to § 1001.62 (except as provided for in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

* * * * *

■ 7. Section 1001.72 is revised to read as follows:

§ 1001.72 Payments from the producer—settlement fund.

No later than the day after the due date required for payment to the Market Administrator pursuant to § 1001.71 (except as provided in § 1001.90), the Market Administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the Market Administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

■ 8. In § 1001.73, paragraphs (a)(2) introductory text and (e) introductory text are revised to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) *Final payment.* For milk received during the month, payment shall be made during the following month so it is received by each producer no later than the day after the required date of payment by the Market Administrator, pursuant to § 1001.72, in an amount computed as follows:

* * * * *

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer (except for a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or 9(c)), a supporting statement in such form that it may be retained by the recipient which shall show:

* * * * *

Dated: April 6, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-7273 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO-368-A30; DA-01-08-PNW]

Milk in the Pacific Northwest Marketing Area: Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, an interim

final rule concerning pooling provisions of the Pacific Northwest Federal milk order. More than the required number of producers for the Pacific Northwest marketing area approved the issuance of the final order amendments.

DATES: *Effective Date:* May 1, 2005.

FOR FURTHER INFORMATION CONTACT:

Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This document adopts as a final rule, without change, an interim final rule concerning pooling provisions of the Pacific Northwest Federal milk order. Specifically, this final rule permanently adopts a provision that eliminates the ability to simultaneously pool the same milk on the order and on a State-operated order that provides for marketwide pooling.

This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final 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 the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Department of Agriculture (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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity 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 has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees.

For the purposes of determining which dairy farms are “small businesses,” the \$750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler'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.

In the Pacific Northwest Federal milk order, 805 of the 1,164 dairy producers, or about 69 percent, whose milk was pooled under the Pacific Northwest Federal milk order at the time of the hearing (April 2002), would meet the definition of small businesses. On the processing side, 9 of the 20 milk plants associated with the Pacific Northwest milk order during April 2002 would qualify as “small businesses,” constituting about 45 percent of the total.

The adoption of the proposed pooling standard serves to revise established criteria that determine the producer milk that has a reasonable association with—and consistently serves the fluid needs of—the Pacific Northwest milk marketing area and is not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses and do not have any

different economic impact on small entities as opposed to large entities. Therefore, the 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 amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (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.

Prior documents in this proceeding:
Notice of Hearing: Issued February 26, 2002; published March 4, 2002 (67 FR 9622).

Correction to Notice of Hearing:
Issued March 14, 2002; published March 19, 2002 (67 FR 12488)

Tentative Final Decision: Issued August 8, 2003; published August 18, 2003 (68 FR 49375).

Interim Final Rule: Issued January 5, 2004; published January 12, 2004 (69 FR 1654).

Final Decision: Issued December 23, 2004; published December 30, 2004 (69 FR 250).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable

rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Pacific Northwest order effective May 1, 2005. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on December 23, 2004.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective May 1, 2005. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is

marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ The interim final rule amending 7 CFR Part 1124 which was published at 69 FR 1654 on January 12, 2004, is adopted as a final rule without change.

Dated: April 6, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-7272 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-02-P

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052-AC24

Borrower Rights

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) issues this final rule to allow a borrower to waive borrower rights when receiving a loan from a qualified lender as part of a loan syndication with non-Farm Credit System (System) lenders that are otherwise not required by section 4.14A(a)(6) of the Farm Credit Act of 1971, as amended (Act), to provide borrower rights. This rule will provide qualified lenders needed flexibility to meet the credit needs of borrowers seeking financing from a qualified

lender as part of certain syndicated lending arrangements.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Mark Johansen, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434; or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2004, we published a proposed regulation (69 FR 67074) that would permit a borrower to waive part 617, Borrower Rights, when receiving a loan from a qualified lender as part of a loan syndication with non-System lenders that are otherwise not required by the Act to provide borrower rights.¹ As discussed in the preamble to the proposed rule, we have determined that the borrower in these transactions generally possess a very high level of business sophistication. As a result, these borrowers are in a reasonably equal bargaining position with the qualified lender and are able to provide a knowing, voluntary, and intelligent waiver of these rights. To ensure that the borrower understands the rights being waived and is freely and intelligently waiving those rights, we proposed, in addition to the current notice requirement in § 617.7010(c), to require that the borrower certify that he/she was advised by legal counsel at the time of the waiver.

We received 23 comments on the proposed rule: 20 from System institutions, one from the Farm Credit Council (FCC), one from the Independent Community Bankers of America (ICBA), and one from a private citizen (whose comment was not

¹ Title IV, part C of the Act (subchapter IV, part C of title 12 of the United States Code) requires "qualified lenders" to provide for certain "rights of borrowers." Section 4.14A(a)(6) (12 U.S.C. 2202a(a)(6)) defines "qualified lenders" to include: (1) A System institution, except a bank for cooperatives, that makes loans authorized by the Act; and (2) each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (12 U.S.C. 2015(b)(1)(B)) (commonly referred to as an other financing institution (OFI)), but only with respect to loans discounted or pledged under section 1.7(b)(1).

germane to the subject of the rule). While all but two commenters generally supported the proposed rule, every comment letter raised concerns and some offered specific suggestions about particular issues. We discuss the individual comments and our responses below. In addition, we reorganized the final rule, combined the requirements of existing § 617.7010(b) and (c) together (while making a grammatical correction to remove the redundant phrase “and provide an explanation of such right”) and added a new paragraph (c) applicable solely to loan syndications.

II. General Comments

A. Extent of FCA Discretion

Numerous commenters stated that FCA should use its discretionary authorities to not require borrower rights, borrower stock, or territorial concurrence in instances where a qualified lender is engaging in a multi-lender transaction, especially when the borrower has not made a loan application to a qualified lender and where the lead lender in the syndicate is not a qualified lender. Commenters also stated that multi-lender transactions where the qualified lender is not the lead lender closely resemble a loan participation and as such should not be treated as a direct loan requiring borrower stock, borrower rights, and territorial concurrence. This approach, these commenters stated, elevates form over substance. Lastly, one commenter stated that the proposal to waive borrower rights is not a panacea for the issues qualified lenders face in the syndication marketplace and that a borrower may ask for concessions from the entire lending group in exchange for a waiver or the lending group may not be willing to wait for the qualified lender to obtain the waiver.

FCA previously addressed the issue of borrower rights applicability to borrowers in loan syndications in our final notice on Loan Syndication Transactions (69 FR 8407, February 24, 2004). In this notice, we stated that loan syndication transactions come under the Act’s loan-making authority and as such require, among other things, qualified lenders to provide borrower rights to each borrower. Therefore, FCA concluded that it has no discretion to eliminate statutory borrower rights’ requirements for loan syndication transactions. The Agency has not changed its legal interpretation on this issue.

B. Definition of “Participation”

One commenter asked FCA to apply the definition of “participate” and

“participation” in the similar entity provisions of the Act to syndications for eligible borrowers so that borrower rights, stock purchase, and territorial concurrence would not apply. This commenter stated that section 3.1(11)(B)(iii) of the Act demonstrates Congress’ intent to treat syndications and participations identically for all multi-lender transactions that System banks and associations engage in.

FCA also previously addressed this issue in our final notice on Loan Syndication Transactions (69 FR 8407, February 24, 2004) where we stated that section 3.1(11)(B)(iii) of the Act explicitly applies this definition to similar entities only, and not to extensions of credit to eligible borrowers. The Agency has not changed its legal interpretation on this issue.

C. Legal Authority for Waivers

One commenter stated that there is no authority in the Act for FCA to provide for waivers of borrower rights and as such the proposed rule does not comply with the Act. The commenter is correct in that there is no explicit waiver provision in the Act. However, the Supreme Court has clearly stated that “in the context of a broad array of constitutional and statutory provisions” courts should “presume the availability of waiver.”² The Court has further stated that “absent some affirmative indication of Congress’ intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties.”³ The Court has upheld waivers of procedural due process rights concerning property upon evidence that the waiver was “voluntary, intelligent and knowing.”⁴ Therefore, no specific statutory language in the Act is necessary to allow enforceable waivers.

However, FCA has generally prohibited, on public policy grounds, qualified lenders from seeking or accepting waivers of statutory borrower rights. Current § 617.7010(b) provides two exceptions allowing waivers. First, a waiver is allowed when a loan is sold to a non-System lender that is otherwise not required to provide borrower rights (the borrower can either waive his or her rights or the qualified lender and borrower may agree to contractually obligate the buying lender to provide

borrower rights). Second, a waiver is allowed when a loan is guaranteed by the Small Business Administration (SBA) (borrowers receive similar protections under SBA rules and would be unable to obtain the guarantee without the waiver). New § 617.7010(c) adds a third limited exception applicable to sophisticated transactions where the borrower is in a reasonably equal bargaining position with the lender and therefore public policy concerns do not arise. Additionally, the application of borrower rights in syndicated loans may yield the counterproductive and unintended result of denying qualified lender credit to eligible borrowers who are in a position to knowingly, intelligently, and voluntarily waive their rights.

D. Applicability of Borrower Rights to OFIs

One commenter questioned the authority to require OFIs to provide borrower rights and asked us to provide such authority. Section 4.14A(a)(6)(B) of the Act (12 U.S.C. 2202a(a)(6)(B)), which specifically includes OFIs within the definition of “qualified lender”⁵ outlines this authority. Sections 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, and 4.14D of the Act require qualified lenders to provide specific borrower rights, including disclosure, review of adverse credit decisions, and distressed loan restructuring.

E. Need for Rule

One commenter stated that FCA has not explained why utilizing loan participations is not an adequate substitute for loan syndications. As commented to us in a previous rulemaking, the trend in the markets is away from traditional participations and toward syndications, resulting in both System and non-System institutions looking to syndications more than participations to meet their multi-lender needs.

⁵ Section 4.14A(a)(6)(B) of the Act defines a qualified lender to include, in addition to any production credit association, each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under section 1.7(b)(1). Section 1.7(b)(1)(B) (12 U.S.C. 2015(b)(1)) authorizes Farm Credit Banks to discount loans for any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products, any note, draft, or other obligation with the institution’s endorsement or guarantee, the proceeds of which note, draft, or other obligation have been advanced to persons and for purposes eligible for financing by production credit associations as authorized by the Act.

² *New York v. Hill*, 528 U.S. 110, 114 (2000) (quoting *United States v. Mezzanatto*, 513 U.S. 196, 200–201 (1995)) (upholding waiver of criminal defendants’ rights).

³ *United States v. Mezzanatto*, 513 U.S. 196, 200–201 (1995) (multiple citations omitted).

⁴ See *Fuentes v. Shevin*, 405 U.S. 67, 95 (1972) and *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 186 (1972).

III. Specific Comments

A. Avoidance of Borrower Rights

Two commenters stated that it is logically inconsistent to include the phrase “* * * does not include a transaction created for the primary purpose of avoiding borrower rights” in the definition of loan syndication. They further state that capital markets dynamics should shape the appropriate structure of loan transactions. We agree that the capital markets will influence when a loan syndication is used to fund a borrower’s credit needs and that it is extremely unlikely that a qualified lender would structure a loan as a loan syndication for the purpose of avoiding borrower rights. However, it is our role to ensure that qualified lenders use the new authority only for the intended limited purpose of helping qualified lenders ensure that there is a dependable source of credit to agriculture and rural America for all eligible borrowers. Therefore, it is prudent for FCA to keep this language in its regulations.

B. Definition of “Loan Syndication”

One commenter stated that we should add lease transactions to this definition. Borrower rights do not apply to lease transactions and therefore we did not add leases to § 617.7010(c).

Two commenters stated that we should remove the term “syndicated loan” in proposed § 617.7010(c) as the definition is broad enough to include syndicated loans and any other multi-lender structures that may develop in the future. They suggested the following language “a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower.” They argued that such a definition would clearly include syndicated loans, without creating uncertainty about the applicability of the waiver authority in new forms of lending arrangements that may develop in the future and without injecting “artificial” determinants into the selection of the structure of transactions. We do not agree that the commenters’ proposed changes are needed at this time. The waiver provision was drafted to address a specific issue, namely the barrier that requiring borrower rights pose on a qualified lender’s ability to be involved in loan syndications with sophisticated borrowers. In these instances the borrower is in a reasonably equal bargaining position with the lender and is able to intelligently, knowingly, and voluntarily waive their rights. In the future, the FCA is open to entertaining requests to add additional waiver

provisions to address constraints on qualified lenders engaging in other, specific types of multi-lender transactions.

C. Legal Counsel Requirement

A number of commenters stated that the proposed rule’s requirement that the borrower certify that he/she had been advised by legal counsel prior to executing the waiver is “unnecessary and inappropriate” given the sophistication of the borrowers, is burdensome and costly to the borrowers, and is not applicable to existing waiver opportunities. These commenters suggested that we modify the waiver to replace “certify” with a statement that the borrower may wish to consult with legal counsel and to only require that borrowers certify that they were given the opportunity to consult with legal counsel.

Our requirement that a borrower consult with legal counsel before executing a waiver as part of a loan syndication is not intended only for protection of the borrower. It is also intended as a means to help ensure a qualified lender has properly executed steps to prudently implement a waiver of borrower rights. Courts have upheld waivers in a variety of contexts if they are executed knowingly, intelligently, and voluntarily. One element courts have identified as evidence of a knowing and intelligent waiver is representation by legal counsel. An FCA regulation allowing qualified lenders to accept waivers does not insulate the institution from legal challenge to the validity of the waiver. As a safety and soundness regulator, we believe that obtaining a written waiver that states that the borrower was represented by counsel is a prudent way to limit the risk associated with accepting waivers.

Secondly, as pointed out by many commenters, syndicated loan borrowers are almost invariably represented by legal counsel in the transaction and usually obtain a written opinion of counsel before entering into the agreement. Having the borrower sign a statement simply acknowledging that the borrower was, in fact, represented by counsel in the transaction does not appear to significantly increase the burden of doing business with a qualified lender.

One commenter was concerned that the use of the word “certify” in the proposed rule suggests some formal process over and above a written representation by a borrower. We did not intend to suggest this meaning by use of the word “certify.” To clarify and remove any unintended implication, we have revised the final rule to read that

the borrower’s written waiver must contain a “statement” that the borrower was represented by legal counsel in connection with the waiver.

D. Explanation of Borrower Rights

A number of commenters stated that requiring qualified lenders to explain the borrower rights that the borrower is waiving is burdensome, unnecessary, and may subject an association to a litigation risk for failing to adequately “explain” the rights being waived. Three commenters suggested that the lender should only provide a written notice of the borrower rights that the borrower could waive rather than require them to explain these rights. These commenters argued that the borrower’s legal counsel should be the one who explains these rights to the borrower.

We agree with this comment and have revised the final rule to provide that the document evidencing the waiver must “clearly disclose” the rights being waived. Under the final rule, the lender need only ensure that the written waiver accurately states all rights being waived, for example by reference to the relevant statutory citations, without any further requirement to explain the rights to the borrower. We continue to require that the qualified lender explain the rights being waived with the SBA and loan sale waiver opportunities in new § 617.7010(b) as these borrowers are not typically represented by legal counsel.

E. Form of Waiver

One commenter stated that we should allow the lead lender in a loan syndication to include borrower rights waiver language in the Master Loan Agreement. The commenter argued that this would remove a barrier because it would result in one request to the borrower versus numerous. The proposed rule does not stipulate the exact form of the waiver and certification, it only requires that one exists. Language in the Master Loan Agreement that states the borrower rights the borrower is waiving and provides for the borrower to state that they were advised by legal counsel would comply with the waiver provision in § 617.7010(c).

One commenter stated that we should require that the legal counsel advice be given only by the borrower’s legal counsel, not someone like a settlement attorney. We agree that this is the proper interpretation of the requirement and clarify in the final rule that the borrower must be “represented” by legal counsel—meaning that borrower received legal advice from his/or her own counsel.

IV. Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

■ For the reasons stated in the preamble, part 617, chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 617—BORROWER RIGHTS

■ 1. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252).

Subpart A—General

■ 2. In § 617.7010:

- a. Paragraph (a) is amended by removing the reference, "paragraph (b)" and adding in its place, the reference "paragraphs (b) and (c)";
- b. Paragraphs (b) and (c) are revised to read as follows:

§ 617.7010 May borrower rights be waived?

* * * * *

(b) A borrower may waive rights relating to distressed loan restructuring, credit reviews, and the right of first refusal when a loan is guaranteed by the Small Business Administration or in connection with a loan sale as provided in § 617.7015. Waivers obtained pursuant to this paragraph must be voluntary and in writing. The document evidencing the waiver must clearly explain the rights the borrower is being asked to waive.

(c) A borrower may waive all borrower rights provided for in part 617 of these regulations in connection with a loan syndication transaction with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Act to provide borrower rights. For purposes of this paragraph, a "loan

syndication" is a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower, but does not include a transaction created for the primary purpose of avoiding borrower rights. Waivers obtained pursuant to this paragraph must be voluntary and in writing. The document evidencing the waiver must clearly disclose the rights the borrower is waiving. Additionally, the borrower's written waiver must contain a statement that the borrower was represented by legal counsel in connection with execution of the waiver.

Dated: April 5, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05-7233 Filed 4-11-05; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-20235; Airspace Docket No. 05-ASO-1]

Amendment of Class E Airspace; Parsons, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Parsons, TN. The Beech River Regional Airport is being constructed at Parsons, TN. As a result, airspace must be established to contain the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 19 Standard Instrument Approach Procedure (SIAP) to Beech River Regional Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: *Effective Date:* 0901 UTC, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

History

On February 25, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace

at Parsons, TN, (70 FR 9257). This action provides adequate Class E5 airspace for IFR operations at Parsons, TN, Beech River Regional Airport. Designations for Class E are published in FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Parsons, TN.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Parsons, TN [Revised]

Parsons, Scott Field Airport, TN
(Lat. 35°38'16" N., long. 88°07'41" W.)
Beech River Regional Airport, TN
(Lat. 35°39'20" N., long. 88°11'45" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Scott Field Airport, and that airspace within a 6.5-mile radius of Beech River Regional Airport; excluding that airspace within the Lexington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, March 30, 2005

Mark D. Ward,

*Acting Area Director, Air Traffic Division,
Southern Region.*

[FR Doc. 05-7316 Filed 4-11-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE**Department of the Army****32 CFR Part 634**

RIN 0702-AA43

Motor Vehicle Traffic Supervision

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is publishing our rule concerning motor vehicle traffic supervision. The regulation prescribes policies and procedures on motor vehicle traffic supervision on military installations in the continental United States and overseas areas, including registration of privately owned vehicles; granting, suspending, or revoking the privilege to operate a privately owned vehicle on a military installation; administration of the vehicle registration program; driver improvement programs; police traffic supervision; and off-installation traffic activities.

DATES: *Effective Date:* May 12, 2005.

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

FOR FURTHER INFORMATION CONTACT:

Nathan Evans, (703) 693-2126.

SUPPLEMENTARY INFORMATION:**A. Background**

In the December 21, 2004, issue of the **Federal Register** (69 FR 76526) the Department of the Army issued a proposed rule to publish 32 CFR part 634. This final rule prescribes procedures and responsibilities for motor vehicle traffic supervision. The Department of the Army received a response from one commentator. No substantive changes were requested or made. The Department of the Army has added one section since the publication of this part as a proposed rule. Section 634.25(c)(3) was modified to incorporate Department of Defense guidance concerning driving while using a cell phone.

B. Regulatory Flexibility Act

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

C. Unfunded Mandates Reform Act

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

D. National Environmental Policy Act

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

E. Paperwork Reduction Act

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

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

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

G. Executive Order 12866 (Regulatory Planning and Review)

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

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

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

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this final rule does not apply because it will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Jeffery B. Porter,

Chief, Law Enforcement Policy and Oversight Section.

List of Subjects in 32 CFR Part 634

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

■ For reasons stated in the preamble the Department of the Army revises 32 CFR part 634 to read as follows:

PART 634—MOTOR VEHICLE TRAFFIC SUPERVISION**Subpart A—Introduction**

Sec.

634.1 Purpose.

634.2 References.

634.3 Explanation of abbreviations and terms.

634.4 Responsibilities.

634.5 Program objectives.

Subpart B—Driving Privileges

634.6 Requirements for driving privileges.

634.7 Stopping and inspecting personnel or vehicles.

634.8 Implied consent.

634.9 Suspension or revocation of driving or privately owned vehicle registration privileges.

634.10 Remedial driver training programs.

634.11 Administrative due process for suspensions and revocations.

634.12 Army administrative actions against intoxicated drivers.

634.13 Alcohol and drug abuse programs.

634.14 Restoration of driving privileges upon acquittal of intoxicated driving.

- 634.15 Restricted driving privileges or probation.
- 634.16 Reciprocal State-Military action.
- 634.17 Extensions of suspensions and revocations.
- 634.18 Reinstatement of driving privileges.

Subpart C—Motor Vehicle Registration

- 634.19 Registration policy.
- 634.20 Privately owned vehicle operation requirements.
- 634.21 Department of Defense Form 2220.
- 634.22 Termination or denial of registration.
- 634.23 Specified consent to impoundment.

Subpart D—Traffic Supervision

- 634.24 Traffic planning and codes.
- 634.25 Installation traffic codes.
- 634.26 Traffic law enforcement principles.
- 634.27 Speed-measuring devices.
- 634.28 Traffic accident investigation.
- 634.29 Traffic accident investigation reports.
- 634.30 Use of traffic accident investigation report data.
- 634.31 Parking.
- 634.32 Traffic violation reports.
- 634.33 Training of law enforcement personnel.
- 634.34 Blood alcohol concentration standards.
- 634.35 Chemical testing policies and procedures.
- 634.36 Detection, apprehension, and testing of intoxicated drivers.
- 634.37 Voluntary breath and bodily fluid testing based on implied consent.
- 634.38 Involuntary extraction of bodily fluids in traffic cases.
- 634.39 Testing at the request of the apprehended person.
- 634.40 General off installation traffic activities.
- 634.41 Compliance with State laws.
- 634.42 Civil-military cooperative programs.

Subpart E—Driving Records and the Traffic Point System

- 634.43 Driving records.
- 634.44 The traffic point system.
- 634.45 Point system application.
- 634.46 Point system procedures.
- 634.47 Disposition of driving records.

Subpart F—Impounding Privately Owned Vehicles

- 634.48 General.
- 634.49 Standards for impoundment.
- 634.50 Towing and storage.
- 634.51 Procedures for impoundment.
- 634.52 Search incident to impoundment based on criminal activity.
- 634.53 Disposition of vehicles after impoundment.

Subpart G—List of State Driver's License Agencies

- 634.54 List of State Driver's License Agencies.

Authority: 10 U.S.C. 30112(g); 5 U.S.C. 2951; Pub. L. 89-564; 89-670; 91-605; and 93-87.

Subpart A—Introduction

§ 634.1 Purpose.

(a) This subpart establishes policy, responsibilities, and procedures for motor vehicle traffic supervision on military installations in the continental United States (CONUS) and overseas areas. This includes but is not limited to the following:

(1) Granting, suspending, or revoking the privilege to operate a privately owned vehicle (POV).

(2) Registration of POVs.

(3) Administration of vehicle registration and driver performance records.

(4) Driver improvement programs.

(5) Police traffic supervision.

(6) Off-installation traffic activities.

(b) Commanders in overseas areas are authorized to modify these policies and procedures in the following instances:

(1) When dictated by host nation relationships, treaties, and agreements.

(2) When traffic operations under military supervision necessitate measures to safeguard and protect the morale, discipline, and good order in the Services.

§ 634.2 References.

Required and related publications along with prescribed and referenced forms are listed in Appendix A, AR 190-5.

§ 634.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this subpart are explained in the Glossary of AR 190-5. It is available on the internet at: www.usapa.army.mil.

§ 634.4 Responsibilities.

(a) *Departmental.* The Provost Marshal General, Headquarters, Department of the Army (HQDA); Director, Naval Criminal Investigative Service, U.S. Navy (USN); Headquarters, Air Force Security Forces Center; Headquarters, U.S. Marine Corps (USMC); Staff Director, Command Security Office, Headquarters, Defense Logistics Agency (DLA), and Chief, National Guard Bureau will—

(1) Exercise staff supervision over programs for motor vehicle traffic supervision.

(2) Develop standard policies and procedures that include establishing an automated records program on traffic supervision.

(3) Maintain liaison with interested staff agencies and other military departments on traffic supervision.

(4) Maintain liaison with departmental safety personnel on traffic safety and accident reporting systems.

(5) Coordinate with national, regional, and state traffic officials and agencies, and actively participate in conferences and workshops sponsored by the Government or private groups at the national level.

(6) Help organize and monitor police traffic supervision training.

(7) Maintain liaison with the Department of Transportation (DOT) and other Federal departments and agencies on the National Highway Safety Program Standards (NHSPS) and programs that apply to U.S. military traffic supervision.

(8) Participate in the national effort to reduce intoxicated driving.

(b) *All major commanders.* Major commanders of the Army, Navy, Air Force, Marine Corps, and DLA will—

(1) Manage traffic supervision in their commands.

(2) Cooperate with the support programs of state and regional highway traffic safety organizations.

(3) Coordinate regional traffic supervision activities with other major military commanders in assigned geographic areas of responsibility.

(4) Monitor agreements between installations and host state authorities for reciprocal reporting of suspension and revocation of driving privileges.

(5) Participate in state and host nation efforts to reduce intoxicated driving.

(6) Establish awards and recognition programs to recognize successful installation efforts to eliminate intoxicated driving. Ensure that criteria for these awards are positive in nature and include more than just apprehensions for intoxicated driving.

(7) Modify policies and procedures when required by host nation treaties or agreements.

(c) *Major Army commanders.* Major Army commanders will ensure subordinate installations implement all provisions of this part.

(d) *Commanding General, U.S. Army Training and Doctrine Command (CG, TRADOC).* The CG, TRADOC will ensure that technical training for functional users is incorporated into service school instructional programs.

(e) *Installation or activity commander, Director of Military Support and State Adjutant General.* The installation or activity commander (for the Navy, the term installation shall refer to either the regional commander or installation commanding officer, whoever has ownership of the traffic program) will—

(1) Establish an effective traffic supervision program.

(2) Cooperate with civilian police agencies and other local, state, or federal government agencies concerned with traffic supervision.

(3) Ensure that traffic supervision is properly integrated in the overall installation traffic safety program.

(4) Actively participate in Alcohol Safety Action Projects (ASAP) in neighboring communities.

(5) Ensure that active duty Army law enforcement personnel follow the provisions of AR 190-45 in reporting all criminal violations and utilize the Centralized Police Operations Suite (COPS) to support reporting requirements and procedures. Air Force personnel engaged in law enforcement and adjudication activities will follow the provisions of AFI 31-203 in reporting all criminal and traffic violations, and utilized the Security Forces Management Information Systems (SFMIS) to support reporting requirements and procedures.

(6) Implement the terms of this part in accordance with the provisions of the Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71.

(7) Revoke driving privileges in accordance with this part.

(f) *Installation law enforcement officer.* The installation law enforcement officer will—

(1) Exercise overall staff responsibility for directing, regulating, and controlling traffic, and enforcing laws and regulations pertaining to traffic control.

(2) Assist traffic engineering functions at installations by participating in traffic control studies designed to obtain information on traffic problems and usage patterns.

(g) *Safety officer.* Safety officers will participate in and develop traffic accident prevention initiatives in support of the installation traffic safety program.

(h) *Facility engineer (public works officer at Navy installations).* The facility engineer, engineer officer or civil engineer at Air Force installations, in close coordination with the law enforcement officer, will—

(1) Perform that phase of engineering concerned with the planning, design, construction, and maintenance of streets, highways, and abutting lands.

(2) Select, determine appropriate design, procure, construct, install, and maintain permanent traffic and parking control devices in coordination with the law enforcement officer and installation safety officer.

(3) Ensure that traffic signs, signals, and pavement markings conform to the standards in the current Manual on Uniform Traffic Control Devices for Streets and Highways.

(4) Ensure that planning, design, construction, and maintenance of streets and highways conform to the NHSPS as implemented by the Army.

(i) *Traffic engineer.* The traffic engineer, in close coordination with the law enforcement officer, will:

(1) Conduct formal traffic engineering studies.

(2) Apply traffic engineering measures, including traffic control devices, to reduce the number and severity of traffic accidents. (If there is no installation traffic engineer, installation commanders may request these services through channels from the Commander, Military Surface Deployment and Distribution Command, 200 Stovall Street, Alexandria, VA 22332).

(j) *Army Alcohol and Drug Control Officer (ADCO).* The ADCO will provide treatment and education services to personnel with alcohol or drug abuse problems.

(k) *Navy Substance Abuse Rehabilitation Program (SARP) Directors.* These directors will—

(1) Supervise the alcohol/drug rehabilitation services to personnel with alcohol or drug abuse problems.

(2) Provide remedial/motivational education for all persons identified as alcohol or drug abusers who are evaluated as not dependent on alcohol or drugs and who have been referred to level one rehabilitation by their commands.

(l) *Marine Corps Substance Abuse Program Officer.* This officer will provide alcohol/drug education, treatment, and rehabilitation services to personnel with alcohol/drug abuse problems.

(m) *DLA Employee Assistance Program Officer.* This officer will provide alcohol/drug counseling and referral services to identified personnel with alcohol/drug abuse problems in accordance with procedures prescribed by the Labor Relations Officer, Office of Human Resource, HQ DLA.

(n) *Alcohol/Drug Abuse Prevention Treatment (ADAPT) program.* Air Force Commanders will refer personnel identified with alcohol/drug abuse problems to this program in accordance with established procedures.

§ 634.5 Program objectives.

(a) The objectives of motor vehicle traffic supervision are to assure—

(1) Safe and efficient movement of personnel and vehicles.

(2) Reduction of traffic deaths, injuries, and property damage from traffic accidents. Most traffic accidents can be prevented. Investigation of motor vehicle accidents should examine all factors, operator status, vehicle condition, and supervisory control measures involved.

(3) Integration of installation safety, engineering, legal, medical, and law

enforcement resources into the installation traffic planning process.

(4) Removal of intoxicated drivers from installation roadways.

(b) [Reserved]

Subpart B—Driving Privileges

§ 634.6 Requirements for driving privileges.

(a) Driving a Government vehicle or POV on military installations is a privilege granted by the installation commander. Persons who accept the privilege must—

(1) Be lawfully licensed to operate motor vehicles in appropriate classifications and not be under suspension or revocation in any state or host country.

(2) Comply with laws and regulations governing motor vehicle operations on any U. S. military installation.

(3) Comply with installation registration requirements in Subpart C of this part. Vehicle registration is required on all Army installations through use of the Vehicle Registration System (VRS). Vehicle registration is required on all Air Force and DLA installations and as directed by the Chief, National Guard Bureau.

(4) Possess, while operating a motor vehicle and produce on request by law enforcement personnel, the following:

(i) Proof of vehicle ownership or state registration if required by the issuing state or host nation.

(ii) A valid state, host nation, overseas command, or international driver's license and/or OF 346 (U.S. Government Motor Vehicle Operator's Identification Card), as applicable to the class vehicle to be operated, supported by a DD Form 2A (U.S. Armed Forces Identification Card), Common Access Card (CAC) or other appropriate identification for non-Department of Defense (DOD) civilians.

(iii) A valid record of motor vehicle safety inspection, as required by the state or host nation and valid proof of insurance if required by the state or locality.

(iv) Any regulatory permits, or other pertinent documents relative to shipping and transportation of special cargo.

(v) When appropriate, documents that establish identification and status of cargo or occupants.

(vi) Proof of valid insurance. Proof of insurance consists of an insurance card, or other documents issued by the insurance company, that has a policy effective date and an expiration date.

(b) Operators of Government motor vehicles must have proof of authorization to operate the vehicle.

§ 634.7 Stopping and inspecting personnel on vehicles.

(a) Government vehicles may be stopped by law enforcement personnel on military installations based on the installation commander's policy.

(1) In overseas areas, Government vehicles may be stopped on or off installations as determined by host nation agreement and command policy.

(2) Stops and inspections of vehicles at installation gates or entry points and in restricted areas will be conducted according to command policy.

(b) Stops and inspections of POVs within the military installation, other than at restricted areas or at an installation gate, are authorized only when there is a reasonable suspicion of criminal activity, or of a violation of a traffic regulation or of the installation commander's policy. Marine Corps users will be guided by publication of Marine Corps order and Military Rules of Evidence 311–316 and local command regulations. DLA users, see DLAR 5700.7.

(c) At the time of stop, the driver and occupants may be required to display all pertinent documents, including but not limited to:

(1) DD Form 2A.

(2) Documents that establish the identity and status of civilians; for example, Common Access Card (CAC), DD Form 1173 (Uniformed Services Identification and Privilege Card), DA Form 1602 (Civilian Identification), AF Form 354 (Civilian Identification Card), DD Form 2 (Armed Forces of the United States Identification Card), post pass, national identity card, or other identification.

(3) Proper POV registration documents.

(4) Host nation vehicle registration documents, if applicable.

(5) Authorization to operate a Government vehicle, if applicable.

(6) Drivers license or OF 346 valid for the particular vehicle and area of operation.

(7) Proof of insurance.

§ 634.8 Implied consent.

(a) *Implied consent to blood, breath, or urine tests.* Persons who drive on the installation shall be deemed to have given their consent to evidential tests for alcohol or other drug content of their blood, breath, or urine when lawfully stopped, apprehended, or cited for any offense allegedly committed while driving or in physical control of a motor vehicle on military installations to determine the influence of intoxicants.

(b) *Implied consent to impoundment.* Any person granted the privilege to operate or register a motor vehicle on a

military installation shall be deemed to have given his or her consent for the removal and temporary impoundment of the POV when it is parked illegally, or for unreasonable periods, as determined by the installation commander or applicable authority, interfering with military operations, creating a safety hazard, disabled by accident, left unattended in a restricted or controlled area, or abandoned. Such persons further agree to reimburse the United States for the cost of towing and storage should their motor vehicle be removed or impounded. Existence of these conditions will be determined by the installation commander or designee.

(c) Any person who operates, registers, or who is in control of a motor vehicle on a military installation involved in a motor vehicle or criminal infraction shall be informed that notice of the violation of law or regulation will be forwarded to the Department of Motor Vehicles (DMV) of the host state and/or home of record for the individual, and to the National Register, when applicable.

§ 634.9 Suspension or revocation of driving or privately owned vehicle registration privileges.

The installation commander or designee may for cause, or any lawful reason, administratively suspend or revoke driving privileges on the installation. The suspension or revocation of installation driving privileges or POV registrations, for lawful reasons unrelated to traffic violations or safe vehicle operation, is not limited or restricted by this part.

(a) *Suspension.* (1) Driving privileges are usually suspended when other measures fail to improve a driver's performance. Measures should include counseling, remedial driving training, and rehabilitation programs if violator is entitled to the programs. Driving privileges may also be suspended for up to 6 months if a driver continually violates installation parking regulations. The commander will determine standards for suspension based on frequency of parking violations and publish those standards. Aboard Navy installations, any vehicle parked in a fire lane will be towed at the owner's expense. Any vehicle parked without authorization in an area restricted due to force protection measures may subject the driver to immediate suspension by the installation commanding officer. Vehicle will be towed at the owner/operator's expense.

(2) The installation commander has discretionary power to withdraw the authorization of active duty military personnel, DOD civilian employees, and

nonappropriated funds (NAF) employees, contractors and subcontractors to operate Government vehicles.

(3) Immediate suspension of installation or overseas command POV driving privileges pending resolution of an intoxicated driving incident is authorized for active duty military personnel, family members, retired members of the military services, DOD civilian personnel, and others with installation or overseas command driving privileges, regardless of the geographic location of the intoxicated driving incident. Suspension is authorized for non-DOD affiliated civilians only with respect to incidents occurring on the installation or in areas subject to military traffic supervision. After a review of available information as specified in § 634.11, installation driving privileges will be immediately suspended pending resolution of the intoxicated driving accident in the following circumstances:

(i) Refusal to take or complete a lawfully requested chemical test to determine contents of blood for alcohol or other drugs.

(ii) Operating a motor vehicle with a blood alcohol content (BAC) of .08 percent by volume (.08 grams per 100 milliliters) or higher or in violation of the law of the jurisdiction that is being assimilated on the military installation.

(iii) Operating a motor vehicle with a BAC of 0.05 percent by volume but less than 0.08 percent blood alcohol by volume in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension solely on the basis of the BAC level (as measured in grams per 100 milliliters).

(iv) On an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving.

(b) *Revocation.* (1) The revocation of installation or overseas command POV driving privileges is a severe administrative measure to be exercised for serious moving violations or when other available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specified period, but never less than 6 months, applies at all military installations, and remains in effect upon reassignment.

(2) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting privilege (see § 634.6). Revocation of installation driving and registration privileges is authorized for military personnel, family members, civilian employees of

DOD, contractors, and other individuals with installation driving privileges. For civilian guests, revocation is authorized only with respect to incidents occurring on the installation or in the areas subject to military traffic supervision.

(3) Driving privileges will be revoked for a mandatory period of not less than 1 year in the following circumstances:

(i) The installation commander or designee has determined that the person lawfully apprehended for driving under the influence refused to submit to or complete a test to measure the alcohol content in the blood, or detect the presence of any other drug, as required by the law of the jurisdiction, or installation traffic code, or by Service directive.

(ii) A conviction, nonjudicial punishment, or a military or civilian administrative action resulting in the suspension or revocation of driver's license for intoxicated driving. Appropriate official documentation of such conviction is required as the basis for revocation.

(4) When temporary suspensions under paragraph (a)(3) of this section are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: privileges were initially suspended on January 1, 2000 for a charge of intoxicated driving with a BAC of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on February 1 pending resolution of the charge. On March 1, 2000, the driver was convicted for intoxicated driving. The mandatory 1-year revocation period will consist of January 2000 plus March 2000 through January 2001, for a total of 12 months with no installation driving privileges).

(c) Army provost marshals will use the automated VRS to develop and maintain records showing that an individual's driving privileges have been revoked.

§ 634.10 Remedial driver training programs.

(a) Navy activities will comply with OPNAVINST 5100.12 Series, and Marine Corps activities with current edition of MCO 5100.19C for establishment of remedial training programs.

(b) Installation commanders may establish a remedial driver-training program to instruct and educate personnel requiring additional training. Personnel may be referred to a remedial program on the basis of their individual

driving history or incidents requiring additional training. The curriculum should provide instruction to improve driving performance and compliance with traffic laws.

(c) Installation commanders may schedule periodic courses, or if not practical, arrange for participation in courses conducted by local civil authorities.

(d) Civilian personnel employed on the installation, contractor employees, and family members of military personnel may attend remedial courses on the installation, or similar courses off the installation which incur no expense to the government.

§ 634.11 Administrative due process for suspensions and revocations.

(a) Individual Services will promulgate separate regulations establishing administrative due process procedures for suspension or revocation of driving privileges. The procedures in paragraphs (b) and (c) of this section apply to actions taken by Army commanders with respect to Army military personnel and family members and to civilian personnel operating motor vehicles on Army installations. For Marine Corps users, the provisions of this section apply. For Air Force users, a preliminary suspension for intoxicated driving remains in effect until the installation commander makes a final decision. Requested hearings must take place within a reasonable period, which is determined by the installation commander.

(b) For offenses other than intoxicated driving, suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers that person an administrative hearing. Suspension or revocation will take place 14 calendar days after written notice is received unless the affected person makes an application for a hearing within this period. Such application will stay the pending suspension or revocation for a period of 14 calendar days.

(1) If, due to action by the government, a hearing is not held within 14 calendar days, the suspension will not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the 14-day period, the suspension or revocation will become effective immediately on receipt of notice that the request for continuance has been granted, and remain in force pending a hearing at a scheduled hearing date.

(2) If it is determined as a result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective when the person receives the written notification of such action. In the event that written notification cannot be verified, either through a return receipt for mail or delivery through command channels, the hearing authority will determine the effective date on a case-by-case basis.

(3) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through command channels to the installation commander within 14 calendar days from the date the individual is notified of the suspension or revocation resulting from the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be considered per § 634.15.

(4) If driving privileges are temporarily restored (i.e. for family hardship) pending resolution of charges, the period of revocation (after final authority determination) will still total the mandatory 12 months. The final date of the revocation will be adjusted to account for the period when the violator's privileges were temporarily restored, as this period does not count towards the revocation time.

(c) For drunk driving or driving under the influence offenses, reliable evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate suspension of installation driving privileges.

(1) The reviewer should be any officer to include GS-11 and above, designated in writing by the installation or garrison commander whose primary duties are not in the field of law enforcement.

(2) Reliable evidence includes witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to complete chemical testing, videotapes, statements by the apprehended individual, field sobriety or preliminary breath tests results, and other pertinent evidence. Immediate suspension should not be based solely on published lists of arrested persons, statements by parties not witnessing the apprehension, or telephone conversations or other information not supported by documented and reliable evidence.

(3) Reviews normally will be accomplished within the first normal duty day following final assembly of evidence.

(4) Installation commanders may authorize the installation law enforcement officer to conduct reviews and authorize suspensions in cases where the designated reviewer is not reasonably available and, in the judgment of the installation law enforcement officer, such immediate action is warranted. Air Force Security Forces personnel act in an advisory capacity to installation commanders. Review by the designated officer will follow as soon as practical in such cases. When a suspension notice is based on the law enforcement officer's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(5) For active duty military personnel, final written notice of suspension for intoxicated driving will be provided to the individual's chain of command for immediate presentation to the individual. Air Force Security Forces provide a copy of the temporary suspension to the individual at the time of the incident or may provide a copy of the final determination at the time of the incident, as pre-determined by the final action authority.

(6) For civilian personnel, written notice of suspension for intoxicated driving will normally be provided without delay via certified mail. Air Force Security Forces personnel provide a copy of the temporary suspension to the individual at the time of the incident or may provide a copy of the final determination at the time of the incident, as pre-determined by the final action authority. If the person is employed on the installation, such notice will be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended will be required to provide written acknowledgment of receipt of the suspension notice.

(7) Notices of suspension for intoxicated driving will include the following:

(i) The fact that the suspension can be made a revocation under § 634.9(b).

(ii) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within 14 calendar days of the final notice of suspension.

(iii) The right of military personnel to be represented by counsel at his or her own expense and to present evidence and witnesses at his or her own expense. Installation commanders will determine the availability of any local active duty representatives requested.

(iv) The right of Department of Defense civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(v) Written acknowledgment of receipt to be signed by the individual whose privileges are to be suspended or revoked.

(8) If a hearing is requested, it must take place within 14 calendar days of receipt of the request. The suspension for intoxicated driving will remain in effect until a decision has been made by the installation commander or designee, but will not exceed 14 calendar days after the hearing while awaiting the decision. If no decision has been made by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(9) Hearing on suspension actions under § 634.9(a) for drunk or impaired driving pending resolution of charges will cover only the following pertinent issues of whether—

(i) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle under the influence of alcohol or other drugs.

(ii) The person was lawfully cited or apprehended for a driving under the influence offense.

(iii) The person was lawfully requested to submit his or her blood, breath, or urine in order to determine the content of alcohol or other drugs, and was informed of the implied consent policy (consequences of refusal to take or complete the test).

(iv) The person refused to submit to the test for alcohol or other drug content of blood, breath, or urine; failed to complete the test; submitted to the test and the result was .08 or higher blood alcohol content, or between .05 and .08 in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension solely on the basis of the BAC level; or showed results indicating the presence of other drugs for an on-post apprehension or in violation of State laws for an off-post apprehension.

(v) The testing methods were valid and reliable and the results accurately evaluated.

(10) For revocation actions under § 634.9(b) (3) for intoxicated driving, the revocation is mandatory on conviction

or other findings that confirm the charge. (Pleas of nolo contendere are considered equivalent to guilty pleas).

(i) Revocations are effective as of the date of conviction or other findings that confirm the charges. Test refusal revocations will be in addition to any other revocation incurred during a hearing. Hearing authority will determine if revocations for multiple offenses will run consecutively or concurrently taking into consideration if offenses occurred on same occasion or different times, dates. The exception is that test refusal will be one year automatic revocation in addition to any other suspension.

(ii) The notice that revocation is automatic may be placed in the suspension letter. If it does not appear in the suspension letter, a separate letter must be sent and revocation is not effective until receipt of the written notice.

(iii) Revocations cancel any full or restricted driving privileges that may have been restored during suspension and the resolution of the charges. Requests for restoration of full driving privileges are not authorized.

(11) The Army Vehicle Registration System will be utilized to maintain infractions by individuals on Army installations.

§ 634.12 Army administrative actions against intoxicated drivers.

Army commanders will take appropriate action against intoxicated drivers. These actions may include the following:

(a) A written reprimand, administrative in nature, will be issued to active duty Soldiers in the cases described in this paragraph (a). Any general officer, and any officer frocked to the grade of brigadier general, may issue this reprimand. Filing of the reprimand will be in accordance with the provisions of AR 600–37.

(1) Conviction by courts-martial or civilian court or imposition of nonjudicial punishment for an offense of drunk or impaired driving either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content is 0.08 percent or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of the law of the State involved.

(4) Driving, or being in physical control of a motor vehicle, either on or off the installation, when lawfully conducted chemical tests reflect the presence of illegal drugs.

(b) Review by the commander of the service records of active duty soldiers apprehended for offenses described in paragraph (a) of this section to determine if the following action(s) should be taken—

(1) Administrative reduction per AR 600–8–19, or

(2) Bar to reenlistment per AR 601–280, or

(3) Administrative separation per AR 635–200.

§ 634.13 Alcohol and drug abuse programs.

(a) Commanders will refer military personnel suspected of drug or alcohol abuse for evaluation in the following circumstances:

(1) Behavior indicative of alcohol or drug abuse.

(2) Continued inability to drive a motor vehicle safely because of alcohol or drug abuse.

(b) The commander will ensure military personnel are referred to the installation alcohol and drug abuse program or other comparable facilities when they are convicted of, or receive an official administrative action for, any offense involving driving under the influence. A first offender may be referred to treatment if evidence of substance abuse exists in addition to the offense of intoxicated driving. The provisions of this paragraph do not limit the commander's prerogatives concerning other actions that may be taken against an offender under separate Service/Agency policies (Army, see AR 600–85. Marine Corps, see MCO P1700.24B).

(c) Active duty Army personnel apprehended for drunk driving, on or off the installation, will be referred to the local Army Substance Abuse Program (ASAP) for evaluation within 14 calendar days to determine if the person is dependent on alcohol or other drugs which will result in enrollment in treatment in accordance with AR 600–85. A copy of all reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(d) Active duty Navy personnel apprehended for drunk driving on or off the installation will be screened by the respective SARP facility within 14 calendar days to determine if the individual is dependent on alcohol or other drugs. Active duty Marines apprehended for intoxicated driving, on

or off the installation, will be referred to interview by a Level II substance abuse counselor within 14 calendar days for evaluation and determination of the appropriate level of treatment required. Subsequent to this evaluation, the Marine will be assigned to the appropriate treatment programs as prescribed by MCO P1700.24B.

(e) The Services/Agencies may develop preventive treatment and rehabilitative programs for civilian employees with alcohol-related problems.

(f) Army supervisors of civilian employees apprehended for intoxicated driving will advise employees of ASAP services available. Civilian employees apprehended for intoxicated driving while on duty will be referred to the ASAP or comparable facility for evaluation in accordance with AR 600–85. Army commanders will ensure that sponsors encourage family members apprehended for drunk driving seek ASAP evaluation and assistance.

(g) Navy and DLA civilian personnel charged with intoxicated driving will be referred to the Civilian Employee Assistance Program in accordance with 5 CFR Part 792. Such referral does not exempt the employee from appropriate administrative or disciplinary actions under civilian personnel regulations.

(h) Marine Corps civilian employees charged with intoxicated driving, on or off the installation, will be referred to the Employee Assistance Program as prescribed by MCO P1700.24B. Marine family members charged with intoxicated driving, on or off the installation, will be provided assistance as addressed in MCO P1700.24B. Such referral and assistance does not exempt the individual from appropriate administrative or disciplinary action under current civilian personnel regulations or State laws.

(i) For the Army, DLA, and the Marine Corps, installation driving privileges of any person who refuses to submit to, or fails to complete, chemical testing for blood-alcohol content when apprehended for intoxicated driving, or convicted of intoxicated driving, will not be reinstated unless the person successfully completes either an alcohol education or treatment program sponsored by the installation, state, county, or municipality, or other program evaluated as acceptable by the installation commander.

(j) Active duty Air Force personnel apprehended for drunk driving, on or off the installation, will be referred by their respective chain of command to the Air Force Substance Abuse office for evaluation in accordance with AFI 44–121/Alcohol Drug Abuse & Treatment

Program, and local policies within seven days.

(k) Local installation commanders will determine if active duty Air Force personnel involved in any alcohol incident will immediately be subjected to a urinalysis for drug content. If consent is not given for the test, a command-directed test will be administered in accordance with local policies.

§ 634.14 Restoration of driving privileges upon acquittal of intoxicated driving.

The suspension of driving privileges for military and civilian personnel shall be restored if a final disposition indicates a finding of not guilty, charges are dismissed or reduced to an offense not amounting to intoxicated driving, or where an equivalent determination is made in a nonjudicial proceeding. The following are exceptions to the rule in which suspensions will continue to be enforced.

(a) The preliminary suspension was based on refusal to take a BAC test.

(b) The preliminary suspension resulted from a valid BAC test, (unless disposition of the charges was based on invalidity of the BAC test). In the case of a valid BAC test, the suspension will continue, pending completion of a hearing as specified in § 634.11. In such instances, the individual will be notified in writing that the suspension will continue and of the opportunity to request a hearing within 14 calendar days.

(1) At the hearing, the arrest report, the commander's report of official disposition, information presented by the individual, and such other information as the hearing officer may deem appropriate will be considered.

(2) If the hearing officer determines by a preponderance of evidence that the individual was engaged in intoxicated driving, the revocation will be for 1 year from the date of the original preliminary suspension.

(c) The person was driving or in physical control of a motor vehicle while under a preliminary suspension or revocation.

(d) An administrative determination has been made by the state or host nation licensing authority to suspend or revoke driving privileges.

(e) The individual has failed to complete a formally directed substance abuse or driver's training program.

§ 634.15 Restricted driving privileges or probation.

(a) For the Navy, Air Force, Marine Corps, and DLA, the installation commander, or his or her designee may modify a suspension or revocation of

driving privileges in certain cases per paragraph (d) of this section.

(b) Army requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges will be referred to the installation commander or designee, except for intoxicated driving cases, which must be referred to the General Court Martial Convening Authority. Withdrawal of restricted driving privileges is within the installation commander's discretion.

(c) Probation or restricted driving privileges will not be granted to any person whose driver license or right to operate motor vehicles is under suspension or revocation by a state, Federal, or host nation licensing authority. Prior to application for probation or restricted driving privileges, a state, Federal, or host nation driver's license or right to operate motor vehicles must be reinstated. The burden of proof for reinstatement of driving privileges lies with the person applying for probation or restricted driving privileges. Revocations for test refusals shall remain.

(d) The installation commander or designee may grant restricted driving privileges or probation on a case-by-case basis provided the person's state or host nation driver's license or right to operate motor vehicles remains valid to accommodate any of the following reasons:

(1) Mission requirements.

(2) Unusual personal or family hardships.

(3) Delays exceeding 90 days, not attributed to the person concerned, in the formal disposition of an apprehension or charges that are the basis for any type of suspension or revocation.

(4) When there is no reasonably available alternate means of transportation to officially assigned duties. In this instance, a limited exception can be granted for the sole purpose of driving directly to and from the place of duty.

(e) The terms and limitations on a restricted driving privilege (for example, authorization to drive to and from place of employment or duty, or selected installation facilities such as hospital, commissary, and other facilities) will be specified in writing and provided to the individual concerned. Persons found in violation of the restricted privilege are subject to revocation action as prescribed in § 634.9.

(f) The conditions and terms of probation will be specified in writing and provided to the individual concerned. The original suspension or

revocation term in its entirety may be activated to commence from the date of the violation of probation. In addition, separate action may be initiated based on the commission of any traffic, criminal, or military offense that constitutes a probation violation.

(g) DOD employees and contractors, who can demonstrate that suspension or revocation of installation driving privileges would constructively remove them from employment, may be given a limiting suspension/revocation that restricts driving on the installation or activity (or in the overseas command) to the most direct route to and from their respective work sites (5 U.S.C. 2302(b)(10)). This is not to be construed as limiting the commander from suspension or revocation of on-duty driving privileges or seizure of OF 346, even if this action would constructively remove a person from employment in those instances in which the person's duty requires driving from place to place on the installation.

§ 634.16 Reciprocal State-Military action.

(a) Commanders will recognize the interests of the states in matters of POV administration and driver licensing. Statutory authority may exist within some states or host nations for reciprocal suspension and revocation of driving privileges. See Subpart D of this part for additional information on exchanging and obtaining information with civilian law enforcement agencies concerning infractions by Armed Service personnel off post. Installation commanders will honor the reciprocal authority and direct the installation law enforcement officer to pursue reciprocity with state or host nation licensing authorities. Upon receipt of written or other official law enforcement communication relative to the suspension/revocation of driving privileges, the receiving installation will terminate driving privileges as if violations occurred within its own jurisdiction.

(b) When imposing a suspension or revocation for an off-installation offense, the effective date should be the same as civil disposition, or the date that state or host-nation driving privileges are suspended or revoked. This effective date can be retroactive.

(c) If statutory authority does not exist within the state or host nation for formal military reciprocity, the procedures below will be adopted:

(1) Commanders will recognize official documentation of suspensions/revocations imposed by state or host nation authorities. Administrative actions (suspension/revocations, or if recognized, point assessment) for

moving traffic violations off the installation should not be less than required for similar offenses on the installation. When notified by state or host nation authorities of a suspension or revocation, the person's OF 346 may also be suspended.

(2) In CONUS, the host and issuing state licensing authority will be notified as soon as practical when a person's installation driving privileges are suspended or revoked for any period, and immediately for refusal to submit to a lawful BAC test. The notification will be sent to the appropriate state DMV(s) per reciprocal agreements. In the absence of electronic communication technology, the appropriate state DMV(s) will be notified by official certified mail. The notification will include the basis for the suspension/revocation and the BAC level if applicable.

(d) OCONUS installation commanders must follow provisions of the applicable Status of Forces Agreement (SOFA), the law of the host nation concerning reciprocal suspension and revocation, and other international agreements. To the extent an agreement concerning reciprocity may be permitted at a particular overseas installation, the commander must have prior authorization to negotiate and conclude such an international agreement in accordance with applicable international agreements, DODD 5530.3, International Agreements, June 87, and other individual Service instructions.

§ 634.17 Extensions of suspensions and revocations.

(a) Driving in violation of a suspension or revocation imposed under this part will result in the original period of suspension or revocation being increased by 2 years. In addition, administrative action may be initiated based on the commission of any traffic, criminal, or military offenses, for example, active duty military personnel driving on the installation in violation of a lawful order.

(b) For each subsequent determination within a 5-year period that revocation is authorized under § 634.9, military personnel, DOD civilians, contractors and NAF employees will be prohibited from obtaining or using an OF 346 for 6 months for each such incident. A determination whether DOD civilian personnel should be prohibited from obtaining or using an OF 346 will be made in accordance with the laws and regulations applicable to civilian personnel. This does not preclude a commander from imposing such prohibition for a first offense, or for a longer period of time for a first or

subsequent offense, or for such other reasons as may be authorized.

(c) Commanders may extend a suspension or revocation of driving privileges on personnel until completion of an approved remedial driver training course or alcohol or drug counseling programs after proof is provided.

(d) Commanders may extend a suspension or revocation of driving privileges on civilian personnel convicted of intoxicated driving on the installation until successful completion of a state or installation approved alcohol or drug rehabilitation program.

(e) For Navy personnel for good cause, the appropriate authority may withdraw the restricted driving privilege and continue the suspension or revocation period (for example, driver at fault in the traffic accident, or driver cited for a moving violation).

§ 634.18 Reinstatement of driving privileges.

Reinstatement of driving privileges shall be automatic, provided all revocations applicable have expired, proper proof of completion of remedial driving course and/or substance abuse counseling has been provided, and reinstatement requirements of individual's home state and/or state the individual may have been suspended in, have been met.

Subpart C—Motor Vehicle Registration

§ 634.19 Registration policy.

(a) Motor vehicles will be registered according to guidance in this Part and in policies of each Service and DLA. A person who lives or works on an Army, DLA, Air Force, Navy, or Marine Corps installation, or Army National Guard of the U.S. (ARNGUS) facility, or often uses the facilities is required to register his or her vehicle. Also, individuals who access the installation for regular activities such as use of medical facilities and regular recurring activities on the installation should register their vehicles according to a standard operating procedure established by the installation commander. The person need not own the vehicle to register it, but must have a lease agreement, power of attorney, or notarized statement from the owner of the vehicle specifying the inclusive dates for which permission to use the vehicle has been granted.

(b) Vehicles intended for construction and material handling, or used solely off the road, are usually not registered as motor vehicles. Installation commanders may require registration of off-road vehicles and bicycles under a separate local system.

(c) Commanders can grant limited temporary registration for up to 30 days, pending permanent registration, or in other circumstances for longer terms.

(d) Except for reasons of security, all installations and activities of the Services and DLA within the United States and its territories with a vehicle registration system will use and honor the DD Form 2220, (Department of Defense Registration Decal). Registration in overseas commands may be modified in accordance with international agreements or military necessity.

(e) Army Installation commanders will establish local visitor identification for individuals who will be on installation for less than 30 days. The local policy will provide for use of temporary passes that establish a start and end date for which the pass is valid. Army installation commanders must refer to AR 190–16 Chapter 2 for guidance concerning installation access control. (Air Force, see AFI 31–204). Other Armed Services and DLA may develop and issue visitor passes locally.

(f) The conditions in § 634.20 must be met to operate a POV on an Army and DLA Installation. Other Armed Services that do not require registration will enforce § 634.20 through traffic enforcement actions. Additionally, failure to comply with § 634.20 may result in administrative suspension or revocation of driving privileges.

§ 634.20 Privately owned vehicle operation requirements.

Personnel seeking to register their POVs on military installations within the United States or its territories and in overseas areas will comply with the following requirements. (Registration in overseas commands may be modified in accordance with international agreements or military necessity.)

(a) Possess a valid state, overseas command, host nation or international drivers license (within appropriate classification), supported by DD Form 2, or other appropriate identification for DOD civilians, contractors and retirees. DA Form 1602, Civilian Identification Card, is limited for identification on Army installations only.

(b) Possess a certificate of state registration as required by the state in which the vehicle is registered.

(c) Comply with the minimum requirements of the automobile insurance laws or regulations of the state or host nation. In overseas commands where host nation laws do not require minimum personal injury and property damage liability insurance, the major overseas commander will set reasonable liability insurance requirements for registration and/or

operation of POVs within the confines of military installations and areas where the commander exercises jurisdiction. Prior to implementation, insurance requirements in host states or nations should be formally coordinated with the appropriate host agency.

(d) Satisfactorily complete a safety and mechanical vehicle inspection by the state or jurisdiction in which the vehicle is licensed. If neither state nor local jurisdiction requires a periodic safety inspection, installation commanders may require and conduct an annual POV safety inspection; however, inspection facilities must be reasonably accessible to those requiring use. Inspections will meet minimum standards established by the National Highway Traffic Safety Administration (NHTSA) in 49 CFR 570.1 through 570.10. Lights, turn signals, brake lights, horn, wipers, and pollution control devices and standards in areas where applicable, should be included in the inspection. Vehicles modified from factory standards and determined unsafe may be denied access and registration.

(e) Possess current proof of compliance with local vehicle emission inspection if required by the state, and maintenance requirements.

(f) Vehicles with elevated front or rear ends that have been modified in a mechanically unsafe manner are unsafe and will be denied registration. 49 CFR 570.8 states that springs shall not be extended above the vehicle manufacturer's design height.

§ 634.21 Department of Defense Form 2220.

(a) *Use.* DD Form 2220 will be used to identify registered POVs on Army, Navy, Air Force, Marine Corps, and DLA installations or facilities. The form is produced in single copy for conspicuous placement on the front of the vehicle only (windshield or bumper). If allowed by state laws, the decal is placed in the center by the rear view mirror or the lower portion of the driver's side windshield. The requirement to affix the DD Form 2220 to the front windshield or bumper of registered vehicles is waived for General Officers and Flag Officers of all Armed Services, Armed Service Secretaries, Political Appointees, Members of Congress, and the Diplomatic Corps.

(1) Each Service and DLA will procure its own forms and installation and expiration tabs. For the Army, the basic decal will be ordered through publications channels and remain on the vehicle until the registered owner disposes of the vehicle, separates from active duty or other conditions specified

in paragraph (a)(2) of this section. Air Force, DLA, and Army retirees may retain DD Form 2220. Army retirees are required to follow the same registration and VRS procedures as active duty personnel. Upon termination of affiliation with the service, the registered owner or authorized operator is responsible for removing the DD Form 2220 from the vehicle and surrender of the decal to the issuing office. Army installation commanders are responsible for the costs of procuring decals with the name of their installation and related expiration tabs. Air Force installations will use the installation tag (4" by 1/2") to identify the Air Force Installation where the vehicle is registered. Air Force personnel may retain the DD Form 2220 upon reassignment, retirement, or separation provided the individual is still eligible for continued registration, the registration is updated in SFMIS, and the installation tab is changed accordingly. Position the decal directly under the DD Form 2220.

(2) For other Armed Services and DLA, DD Form 2220 and installation and expiration tabs will be removed from POV's by the owner prior to departure from their current installation, retirement, or separation from military or government affiliation, termination of ownership, registration, liability insurance, or other conditions further identified by local policy.

(b) *Specifications.* (1) DD Form 2220 and installation and expiration tabs will consist of international blue borders and printing on a white background. Printer information will include the following:

(i) Form title (Department of Defense Registered Vehicle).

(ii) Alphanumeric individual form identification number.

(iii) DOD seal.

(2) Name of the installation will be specified on a separate tab abutting the decal. Each Service or DLA may choose optional color codes for the registrant. Army and installations having vehicle registration programs will use the following standard color scheme for the installation tab:

(i) Blue-officers.

(ii) Red-enlisted.

(iii) Green DA civilian employees (including NAF employees).

(iv) Black-contractor personnel and other civilians employed on the installation. White will be used for contract personnel on Air Force installations.

(3) An expiration tab identifying the month and year (6-2004), the year (2000) or simply "00" will be abutted to right of the decal. For identification purposes, the date of expiration will be

shown in bold block numbers on a lighter contrasting background such as traffic yellow, lime, or orange.

(4) DD Form 2220 and any adjoining tabs will be theft resistant when applied to glass, metal, painted, or rubberized surfaces and manufactured so as to obliterate or self destruct when removal is attempted. Local policy guided by state or host nation laws will specify the exact placement of DD Form 2220.

(5) For Navy and Marine Corps military personnel the grade insignia will be affixed on placards, approximately 5 inches by 8 inches in size, and placed on the driver's side dashboard. Placards should be removed from view when the vehicle is not located on a military installation.

§ 634.22 Termination or denial of registration.

Installation commanders or their designated representatives will terminate POV registration or deny initial registration under the following conditions (decal and tabs will be removed from the vehicle when registration is terminated):

(a) The owner fails to comply with the registration requirements.

(b) The owner sells or disposes of the POV, is released from active duty, separated from the Service, or terminates civilian employment with a military Service or DOD agency. Army and Air Force personnel on a permanent change of station will retain the DD Form 2220 if the vehicle is moved to their new duty station.

(c) The owner is other than an active duty military or civilian employee and discontinues regular operations of the POV on the installation.

(d) The owner's state, overseas command, or host nation driver's license is suspended or revoked, or the installation driving privilege is revoked. Air Force does not require removal of the DD Form 2220 when driving privileges are suspended for an individual. When vehicle registration is terminated in conjunction with the revocation of installation driving privileges, the affected person must apply to re-register the POV after the revocation expires. Registration should not be terminated if other family members having installation driving privileges require use of the vehicle.

§ 634.23 Specified consent to impoundment.

Personnel registering POVs on DOD installations must consent to the impoundment policy. POV registration forms will contain or have appended to them a certificate with the following statement: "I am aware that (insert

number and title of separate Service or DLA directive) and the installation traffic code provide for the removal and temporary impoundment of privately owned motor vehicles that are either parked illegally, or for unreasonable periods, interfering with military operations, creating a safety hazard, disabled by accident, left unattended in a restricted or control area, or abandoned. I agree to reimburse the United States for the cost of towing and storage should my motor vehicle(s), because of such circumstances, be removed and impounded."

Subpart D—Traffic Supervision

§ 634.24 Traffic planning and codes.

(a) Safe and efficient movement of traffic on an installation requires traffic supervision. A traffic supervision program includes traffic circulation planning and control of motor vehicle traffic; publication and enforcement of traffic laws and regulations; and investigation of motor vehicle accidents.

(b) Installation commanders will develop traffic circulation plans that provide for the safest and most efficient use of primary and secondary roads.

Circulation planning should be a major part of all long-range master planning at installations. The traffic circulation plan is developed by the installation law enforcement officer, engineer, safety officer, and other concerned staff agencies. Highway engineering representatives from adjacent civil communities must be consulted to ensure the installation plan is compatible with the current and future circulation plan of the community. The plan should include the following:

(1) Normal and peak load routing based on traffic control studies.

(2) Effective control of traffic using planned direction, including measures for special events and adverse road or weather conditions.

(3) Point control at congested locations by law enforcement personnel or designated traffic directors or wardens, including trained school-crossing guards.

(4) Use of traffic control signs and devices.

(5) Efficient use of available parking facilities.

(6) Efficient use of mass transportation.

(c) Traffic control studies will provide factual data on existing roads, traffic density and flow patterns, and points of congestion. The installation law enforcement officer and traffic engineer usually conduct coordinated traffic control studies to obtain the data.

Accurate data will help determine major

and minor routes, location of traffic control devices, and conditions requiring engineering or enforcement services.

(d) The (Military) Surface Deployment and Distribution Command Transportation Engineering Agency (SDDCTEA) will help installation commanders solve complex highway traffic engineering problems. SDDCTEA traffic engineering services include—

(1) Traffic studies of limited areas and situations.

(2) Complete studies of traffic operations of entire installations. (This can include long-range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

(e) Installation commanders should submit requests for traffic engineering services in accordance with applicable service or agency directives.

§ 634.25 Installation traffic codes.

(a) Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this Part, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) Highway Safety Program Standards (23 U.S.C. 402).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances.

(b) The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(5) Violators are responsible for all costs of towing, storage and impounding

of vehicles for other than evidentiary reasons.

(c) Installation traffic codes will also contain the provisions discussed as follows: (Army users, see AR 385–55).

(1) *Motorcycles and mopeds.* For motorcycles and other self-propelled, open, two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine, the following traffic rules apply:

(i) Headlights will be on at all times when in operation.

(ii) A rear view mirror will be attached to each side of the handlebars.

(iii) Approved protective helmets, eye protection, hard-soled shoes, long trousers and brightly colored or reflective outer upper garment will be worn by operators and passengers when in operation.

(2) *Restraint systems.* (i) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

(ii) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a POV on the installation.

(iii) Restraint systems will be worn by all military service members and Reserve Component members on active Federal service driving or riding in a POV whether on or off the installation.

(iv) Infant/child restraint devices (car seats) will be required in POVs for children 4 years old or under and not exceeding 45 pounds in weight.

(v) Restraint systems are required only in vehicles manufactured after model year 1966.

(3) *Driver Distractions.* Vehicle operators on a DoD Installation and operators of Government owned vehicles shall not use cell phones unless the vehicle is safely parked or unless they are using a hands-free device. The wearing of any other portable headphones, earphones, or other listening devices (except for hand-free cellular phones) while operating a motor vehicle is prohibited. Use of those devices impairs driving and masks or prevents recognition of emergency signals, alarms, announcements, the approach of vehicles, and human speech. DoD Component safety guidance should note the potential for driver distractions such as eating and drinking, operating radios, CD players, global positioning equipment, etc. Whenever possible this should only be done when the vehicle is safely parked.

(d) Only administrative actions (reprimand, assessment of points, loss of on-post driving privileges, or other actions) will be initiated against service

members for off-post violations of the installation traffic code.

(e) In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 U.S.C. 13 to military installations having concurrent or exclusive Federal jurisdiction.

(f) In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 U.S.C., DODD 5525.4, enclosure 1 expressly adopts the vehicular and pedestrian traffic laws of such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation. In those States where traffic laws cannot be assimilated, an extract copy of this paragraph (f) and a copy of the delegation memorandum in DODD 5525.4, enclosure 1, will be posted in a prominent place accessible to persons assigned, living, or working on the installation.

(g) In those States where violations of traffic laws cannot be assimilated because the Federal Government's jurisdictional authority on the installation or parts of the installation is only proprietary, neither 18 U.S.C. 13 nor the delegation memorandum in DoDD 5525.4, enclosure 1, will permit enforcement of the State's traffic laws in Federal courts. Law enforcement authorities on those military installations must rely on either administrative sanctions related to the installation driving privilege or enforcement of traffic laws by State law enforcement authorities.

§ 634.26 Traffic law enforcement principles.

(a) Traffic law enforcement should motivate drivers to operate vehicles safely within traffic laws and regulations and maintain an effective and efficient flow of traffic. Effective enforcement should emphasize voluntary compliance by drivers and can be achieved by the following actions:

(1) Publishing a realistic traffic code well known by all personnel.

(2) Adopting standard signs, markings, and signals in accordance

with NHSPS and the Manual on Uniform Traffic Control Devices for Streets and Highways.

(3) Ensuring enforcement personnel establish courteous, personal contact with drivers and act promptly when driving behavior is improper or a defective vehicle is observed in operation.

(4) Maintaining an aggressive program to detect and apprehend persons who drive while privileges are suspended or revoked.

(5) Using sound discretion and judgment in deciding when to apprehend, issue citations, or warn the offender.

(b) Selective enforcement will be used when practical. Selective enforcement deters traffic violations and reduces accidents by the presence or suggested presence of law enforcement personnel at places where violations, congestion, or accidents frequently occur. Selective enforcement applies proper enforcement measures to traffic congestion and focuses on selected time periods, conditions, and violations that cause accidents. Law enforcement personnel use selective enforcement because that practice is the most effective use of resources.

(c) Enforcement activities against intoxicated driving will include—

(1) Detecting, apprehending, and testing persons suspected of driving under the influence of alcohol or drugs.

(2) Training law enforcement personnel in special enforcement techniques.

(3) Enforcing blood-alcohol concentration standards. (See § 634.34).

(4) Denying installation driving privileges to persons whose use of alcohol or other drugs prevents safe operation of a motor vehicle.

(d) Installation officials will formally evaluate traffic enforcement on a regular basis. That evaluation will examine procedures to determine if the following elements of the program are effective in reducing traffic accidents and deaths:

(1) Selective enforcement measures;

(2) Suspension and revocation actions; and

(3) Chemical breath-testing programs.

§ 635.27 Speed-measuring devices.

Speed-measuring devices will be used in traffic control studies and enforcement programs. Signs may be posted to indicate speed-measuring devices are being used.

(a) *Equipment purchases.* Installations will ensure operators attend an appropriate training program for the equipment in use.

(b) *Training and certification standards.* (1) The commander of each

installation using traffic radar will ensure that personnel selected as operators of such devices meet training and certification requirements prescribed by the State (or SOFA) in which the installation is located. Specific information on course dates, costs, and prerequisites for attending may be obtained by contacting the State agency responsible for police traffic radar training.

(2) Installation commanders located in States or overseas areas where no formal training program exists, or where the military personnel are unable or ineligible to participate in police traffic radar training programs, may implement their own training program or use a selected civilian institution or manufacturer's course.

(3) The objective of the civilian or manufacturer-sponsored course is to improve the effectiveness of speed enforcement through the proper and efficient use of speed-measurement radar. On successful completion, the course graduate must be able to—

(i) Describe the association between excessive speed and accidents, deaths, and injuries, and describe the traffic safety benefits of effective speed control.

(ii) Describe the basic principles of radar speed measurement.

(iii) Identify and describe the Service's policy and procedures affecting radar speed measurement and speed enforcement.

(iv) Identify the specific radar instrument used and describe the instrument's major components and functions.

(v) Demonstrate basic skills in checking calibration and operating the specific radar instrument(s).

(vi) Demonstrate basic skills in preparing and presenting records and courtroom testimony relating to radar speed measurement and enforcement.

(c) *Recertification.* Recertification of operators will occur every 3 years, or as prescribed by State law.

§ 634.28 Traffic accident investigation.

Installation law enforcement personnel must make detailed investigations of accidents described in this section:

(a) Accidents involving Government vehicles or Government property on the installation involving a fatality, personal injury, or estimated property damage in the amount established by separate Service/DLA policy. (Minimum damage limits are: Army, \$1,000; Air Force, as specified by the installation commander; Navy and Marine Corps, \$500.) The installation motor pool will provide current estimates of the cost of repairs. Investigations of off-installation

accidents involving Government vehicles will be made in cooperation with the civilian law enforcement agency.

(b) POV accidents on the installation involving a fatality, personal injury, or when a POV is inoperable as a result of an accident.

(c) Any accident prescribed within a SOFA agreement.

§ 634.29 Traffic accident investigation reports.

(a) *Accidents requiring immediate reports.* The driver or owner of any vehicle involved in an accident, as described in § 634.28, on the installation, must immediately notify the installation law enforcement office. The operator of any Government vehicle involved in a similar accident off the installation must immediately notify the local civilian law enforcement agency having jurisdiction, as well as law enforcement personnel of the nearest military installation.

(b) *Investigation records.* Installation law enforcement officials will record traffic accident investigations on Service/DLA forms. Information will be released according to Service/DLA policy, the Privacy Act, and the Freedom of Information Act.

(c) *Army law enforcement officers.* These officers provide the local Safety Office copies of traffic accident investigation reports pertaining to accidents investigated by military police that resulted in a fatality, personal injury, or estimated damage to Government vehicles or property in excess of \$1,000.

(d) *POV accidents not addressed in § 634.28.* Guidance for reporting these cases is provided as follows:

(1) Drivers or owners of POVs will be required to submit a written report to the installation law enforcement office within 24 hours of an accident in the following cases, with all information listed in paragraph (d)(3) of this section:

(i) The accident occurs on the installation.

(ii) The accident involves no personal injury.

(iii) The accident involves only minor damage to the POV and the vehicle can be safely and normally driven from the scene under its own power.

(2) Information in the written report cannot be used in criminal proceedings against the person submitting it unless it was originally categorized a hit and run and the violator is the person submitting the report. Rights advisement will be given prior to any criminal traffic statements provided by violators. Within the United States, the installation law enforcement official

may require such reporting on Service forms or forms of the State jurisdiction.

(3) Reports required in paragraph (d) (1) of this section by the Army will include the following about the accident:

- (i) Location, date, and time.
- (ii) Identification of all drivers, pedestrians, and passengers involved.
- (iii) Identification of vehicles involved.
- (iv) Speed and direction of travel of each vehicle involved, including a sketch of the collision and roadway with street names and north arrow.
- (v) Property damage involved.
- (vi) Environmental conditions at the time of the incident (weather, visibility, road surface condition, and other factors).
- (vii) A narrative description of the events and circumstances concerning the accident.

§ 634.30 Use of traffic accident investigation report data.

(a) Data derived from traffic accident investigation reports and from vehicle owner accident reports will be analyzed to determine probable causes of accidents. When frequent accidents occur at a location, the conditions at the location and the types of accidents (collision diagram) will be examined.

(b) Law enforcement personnel and others who prepare traffic accident investigation reports will indicate whether or not seat restraint devices were being used at the time of the accident.

(c) When accidents warrant, an installation commander may establish a traffic accident review board. The board will consist of law enforcement, engineer, safety, medical, and legal personnel. The board will determine principal factors leading to the accident and recommend measures to reduce the number and severity of accidents on and off the installation. (The Air Force will use Traffic Safety Coordinating Groups. The Navy will use Traffic Safety Councils per OPNAVINST 5100.12 Series).

(d) Data will be shared with the installation legal, engineer, safety, and transportation officers. The data will be used to inform and educate drivers and to conduct traffic engineering studies.

(e) Army traffic accident investigation reports will be provided to Army Centralized Accident Investigation of Ground Accidents (CAIG) boards on request. The CAIG boards are under the control of the Commander, U.S. Army Safety Center, Fort Rucker, AL 36362-5363. These boards investigate Class A, on-duty, non-POV accidents and other selected accidents Army-wide (See AR

385-40). Local commanders provide additional board members as required to complete a timely and accurate investigation. Normally, additional board members are senior equipment operators, maintenance officer, and medical officers. However, specific qualifications of the additional board members may be dictated by the nature of the accident.

(f) The CAIG program is not intended to interfere with, impede, or delay law enforcement agencies in the execution of regulatory responsibilities that apply to the investigation of accidents for a determination of criminal intent or criminal acts. Criminal investigations have priority.

(g) Army law enforcement agencies will maintain close liaison and cooperation with CAIG boards. Such cooperation, particularly with respect to interviews of victims and witnesses and in collection and preservation of physical evidence, should support both the CAIG and law enforcement collateral investigations.

§ 634.31 Parking.

(a) The most efficient use of existing on- and off-street parking space should be stressed on a nonreserved (first-come, first-served) basis.

(b) Reserved parking facilities should be designated as parking by permit or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title should be avoided.

(c) Illegal parking contributes to congestion and slows traffic flow on an installation. Strong enforcement of parking restrictions results in better use of available parking facilities and eliminates conditions causing traffic accidents.

(d) The "Denver boot" device is authorized for use as a technique to assist in the enforcement of parking violations where immobilization of the POV is necessary for safety. Under no circumstances should the device be used to punish or "teach a lesson" to violators. Booting should not be used if other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, revocations, or suspensions of on-post driving privileges) are available. Procedures for booting must be developed as follows:

(1) Local standing operating procedures (SOPs) must be developed to control the discretion of enforcers and limit booting to specific offenses. SOPs should focus on specific reasons for booting, such as immobilization of unsafe, uninspected, or unregistered vehicles or compelling the presence of

repeat offenders. All parking violations must be clearly outlined in the installation traffic code.

(2) Drivers should be placed on notice that particular violations or multiple violations may result in booting. Also, drivers must be provided with a prompt hearing and an opportunity to obtain the release of their property.

(3) To limit liability, drivers must be warned when a boot is attached to their vehicle and instructed how to have the boot removed without damaging the vehicle.

§ 634.32 Traffic violation reports.

(a) Most traffic violations occurring on DOD installations (within the UNITED STATES or its territories) should be referred to the proper U.S. Magistrate. (Army, see AR 190-29; DLA, see DLAI 5720.4; and Air Force, see AFI 51-905). However, violations are not referred when—

(1) The operator is driving a Government vehicle at the time of the violation.

(2) A Federal Magistrate is either not available or lacks jurisdiction to hear the matter because the violation occurred in an area where the Federal Government has only proprietary legislative jurisdiction.

(3) Mission requirements make referral of offenders impractical.

(4) A U.S. Magistrate is available but the accused refuses to consent to the jurisdiction of the court and the U.S. Attorney refuses to process the case before a U.S. District Court. For the Navy, DUI and driving under the influence of drugs cases will be referred to the Federal Magistrate.

(b) Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (Armed Forces Traffic Ticket) or a DD Form 1805 (United States District Court Violation Notice), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms. Air Force individuals certified under the Parking Traffic Warden Program may issue DD Form 1408 in areas under their control.

(2) A copy of all reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(c) Installation commanders will establish procedures used for disposing of traffic violation cases through

administrative or judicial action consistent with the Uniform Code of Military Justice (UCMJ) and Federal law.

(d) DD Form 1805 will be used to refer violations of State traffic laws made applicable to the installation (Assimilative Crimes Act (18 U.S.C. 13) and the delegation memorandum in DoDD 5525.4, enclosure 1, and other violations of Federal law) to the U.S. Magistrate. (Army users, see AR 190–29.)

(1) A copy of DD Form 1805 and any traffic violation reports on military personnel and DOD civilian employees will be forwarded to the commander or supervisor of the violator. DA form 3975 may be used to forward the report.

(2) Detailed instructions for properly completing DD Form 1805 are contained in separate Service policy directives.

(3) The assimilation of State traffic laws as Federal offenses should be identified by a specific State code reference in the CODE SECTION block of the DD Form 1805 (or in a complaint filed with the U.S. Magistrate).

(4) The Statement of Probable Cause on the DD Form 1805 will be used according to local staff judge advocate and U.S. Magistrate court policy. The Statement of Probable Cause is required by the Federal misdemeanor rules to support the issuance of a summons or arrest warrant.

(5) For cases referred to U.S. Magistrates, normal distribution of DD Form 1805 will be as follows:

(i) The installation law enforcement official will forward copy 1 (white) and copy 2 (yellow) to the U.S. District Court (Central Violation Bureau).

(ii) The installation law enforcement office will file copy 3 (pink).

(iii) Law enforcement personnel will provide copy 4 (envelope) to the violator.

(e) When DD Form 1408 is used, one copy (including written warnings) will be forwarded through command channels to the service member's commander, to the commander of the military family member's sponsor, or to the civilian's supervisor or employer as the installation commander may establish.

(1) Previous traffic violations committed by the offender and points assessed may be shown.

(2) For violations that require a report of action taken, the DD Form 1408 will be returned to the office of record through the reviewing authority as the installation commander may establish.

(3) When the report is received by the office of record, that office will enter the action on the violator's driving record.

§ 634.33 Training of law enforcement personnel.

(a) As a minimum, installation law enforcement personnel will be trained to do the following:

(1) Recognize signs of alcohol and other drug impairment in persons operating motor vehicles.

(2) Prepare DD Form 1920 (Alcohol Influence Report).

(3) Perform the three field tests of the improved sobriety testing techniques (§ 634.36 (b)).

(4) Determine when a person appears intoxicated but is actually physically or mentally ill and requires prompt medical attention.

(5) Understand the operation of breath-testing devices.

(b) Each installation using breath-testing devices will ensure that operators of these devices—

(1) Are chosen for integrity, maturity, and sound judgment.

(2) Meet certification requirements of the State where the installation is located.

(c) Installations located in States or overseas areas having a formal breath-testing and certification program should ensure operators attend that training.

(d) Installations located in States or overseas areas with no formal training program will train personnel at courses offered by selected civilian institutions or manufacturers of the equipment.

(e) Operators must maintain proficiency through refresher training every 18 months or as required by the State.

§ 634.34 Blood alcohol concentration standards.

(a) Administrative revocation of driving privileges and other enforcement measures will be applied uniformly to offenders driving under the influence of alcohol or drugs. When a person is tested under the implied consent provisions of § 634.8, the results of the test will be evaluated as follows:

(1) If the percentage of alcohol in the person's blood is less than 0.05 percent, presume the person is not under the influence of alcohol.

(2) If the percentage is 0.05 but less than 0.08, presume the person may be impaired. This standard may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If the percentage is 0.08 or more, or if tests reflect the presence of illegal drugs, the person was driving while intoxicated.

(b) Percentages in paragraph (a) of this section are percent of weight by volume of alcohol in the blood based on grams

of alcohol per 100 milliliters of blood. These presumptions will be considered with other evidence in determining intoxication.

§ 634.35 Chemical testing policies and procedures.

(a) *Validity of chemical testing.*

Results of chemical testing are valid under this part only under the following circumstances:

(1) Blood, urine, or other bodily substances are tested using generally accepted scientific and medical methods and standards.

(2) Breath tests are administered by qualified personnel (§ 634.33).

(3) An evidential breath-testing device approved by the State or host nation is used. For Army, Air Force, and Marine Corps, the device must also be listed on the NHTSA conforming products list published in the "Conforming Products List for instruments that conform to the Model Specification for Evidential Breath Testing Devices (58 FR 48705), and amendments."

(4) Procedures established by the State or host nation or as prescribed in paragraph (b) of this section are followed.

(b) *Breath-testing device operational procedures.* If the State or host nation has not established procedures for use of breath-testing devices, the following procedures will apply:

(1) Screening breath-testing devices will be used—

(i) During the initial traffic stop as a field sobriety testing technique, along with other field sobriety testing techniques, to determine if further testing is needed on an evidential breath-testing device.

(ii) According to manufacture operating instructions. (For Army, Air Force and Marine Corps, the screening breath-testing device must also be listed on the NHTSA conforming products list published in the "Model Specifications for Evidential Breath Testers" (September 17, 1993, 58 FR 48705).

(2) Evidential breath-testing devices will be used as follows:

(i) Observe the person to be tested for at least 15 minutes before collecting the breath specimen. During this time, the person must not drink alcoholic beverages or other fluids, eat, smoke, chew tobacco, or ingest any substance.

(ii) Verify calibration and proper operation of the instrument by using a control sample immediately before the test.

(iii) Comply with operational procedures in the manufacturer's current instruction manual.

(iv) Perform preventive maintenance as required by the instruction manual.

(c) *Chemical tests of personnel involved in fatal accidents.* (1) Installation medical authorities will immediately notify the installation law enforcement officer of—

(i) The death of any person involved in a motor vehicle accident.

(ii) The circumstances surrounding such an accident, based on information available at the time of admission or receipt of the body of the victim.

(2) Medical authorities will examine the bodies of those persons killed in a motor vehicle accident to include drivers, passengers, and pedestrians subject to military jurisdiction. They will also examine the bodies of dependents, who are 16 years of age or older, if the sponsors give their consent. Tests for the presence and concentration of alcohol or other drugs in the person's blood, bodily fluids, or tissues will be made as soon as possible and where practical within 8 hours of death. The test results will be included in the medical reports.

(3) As provided by law and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose vehicle is involved in a fatal accident.

§ 634.36 Detection, apprehension, and testing of intoxicated drivers.

(a) Law enforcement personnel usually detect drivers under the influence of alcohol or other drugs by observing unusual or abnormal driving behavior. Drivers showing such behavior will be stopped immediately. The cause of the unusual driving behavior will be determined, and proper enforcement action will be taken.

(b) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle is impaired, field sobriety tests should be conducted on the individual. The DD Form 1920 may be used by law enforcement agencies in examining, interpreting, and recording results of such tests. Law enforcement personnel should use a standard field sobriety test (such as one-leg stand or walk and turn) horizontal gaze nystagmus tests as sanctioned by the National Highway Traffic and Safety Administration, and screening breath-testing devices to conduct field sobriety tests.

§ 634.37 Voluntary breath and bodily fluid testing based on implied consent.

(a) Implied consent policy is explained in § 634.8.

(b) Tests may be administered only if the following conditions are met:

(1) The person was lawfully stopped while driving, operating, or in actual physical control of a motor vehicle on the installation.

(2) Reasonable suspicion exists to believe that the person was driving under the influence of alcohol or drugs.

(3) A request was made to the person to consent to the tests combined with a warning that failure to voluntarily submit to or complete a chemical test of bodily fluids or breath will result in the revocation of driving privileges.

(c) As stated in paragraphs (a) and (b) of this section, the law enforcement official relying on implied consent will warn the person that driving privileges will be revoked if the person fails to voluntarily submit to or complete a requested chemical test. The person does not have the right to have an attorney present before stating whether he or she will submit to a test, or during the actual test. Installation commanders will prescribe the type or types of chemical tests to be used. Testing will follow policies and procedures in § 634.35. The results of chemical tests conducted under the implied consent provisions of this part may be used as evidence in courts-martial, nonjudicial proceedings under Article 15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this part.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.38.

§ 634.38 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined in this section pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated.

Extractions of body fluids in furtherance of other kinds of investigations are governed by the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002) (MRE 315), and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFI 44-102.

(2) Army and Marine Corps personnel should not undertake the nonconsensual extraction of body fluids for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in DLAR 5700.7.

(b) *Rule.* Involuntary bodily fluid extraction must be based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described in § 634.37, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle and suspected of being under the influence of an intoxicant may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.

(i) A search authorization by an appropriate commander or military magistrate obtained pursuant to MRE 315, is required prior to such nonconsensual extraction.

(ii) A search authorization is not required under such circumstances when there is a clear indication that evidence of intoxication will be found and there is reason to believe that the delay necessary to obtain a search authorization would result in the loss or destruction of the evidence sought.

(iii) Because warrantless searches are subject to close scrutiny by the courts, obtaining an authorization is highly preferable. Warrantless searches generally should be conducted only after coordination with the servicing staff judge advocate or legal officer, and attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or military magistrate.

(2) If authorization from the military magistrate or commander proves unsuccessful due to the unavailability of such officials, the commander of a medical facility is empowered by MRE 315, to authorize such extraction from an individual located in the facility at the time the authorization is sought.

(i) Before authorizing the involuntary extraction, the commander of the medical facility should, if circumstances permit, coordinate with the servicing staff judge advocate or legal officer.

(ii) The medical facility commander authorizing the extraction under MRE 315 need not be on duty as the attending physician at the facility where the extraction is to be performed and the actual extraction may be accomplished by other qualified medical personnel.

(iii) The authorizing official may consider his or her own observations of the individual in determining probable cause.

(c) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to AR 600–20, section IV. Extraction of blood will be accomplished by qualified medical personnel. (See MRE 312(g)).

(1) In performing this duty, medical personnel are expected to use only that amount of force that is reasonable and necessary to administer the extraction.

(2) Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander.

(3) Life endangering force will not be used in an attempt to effect nonconsensual extractions.

(4) All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury.

(d) Nonconsensual extractions of blood will be done in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

(e) Use of Army medical treatment facilities and personnel for blood alcohol testing has no relevance to whether or not the suspect is eligible for military medical treatment. The medical effort in such instances is in support of a valid military mission (law enforcement), not related to providing medical treatment to an individual.

§ 634.39 Testing at the request of the apprehended person.

(a) A person subject to tests under § 634.8 may request that an additional test be done privately. The person may choose a doctor, qualified technician, chemist, registered nurse, or other qualified person to do the test. The person must pay the cost of the test. The test must be a chemical test approved by the State or host nation in an overseas command. All tests will be completed as

soon as possible, with any delay being noted on the results.

(b) If the person requests this test, the suspect is responsible for making all arrangements. If the suspect fails to or cannot obtain any additional test, the results of the tests that were done at the direction of a law enforcement official are not invalid and may still be used to support actions under separate Service regulations, UCMJ, and the U.S. Magistrate Court.

§ 634.40 General off installation traffic activities.

In areas not under military control, civil authorities enforce traffic laws. Law enforcement authorities will establish a system to exchange information with civil authorities. Army and Air Force installation law enforcement authorities will establish a system to exchange information with civil authorities to enhance the chain of command's visibility of a soldier's and airman's off post traffic violations. These agreements will provide for the assessment of traffic points based on reports from state licensing authorities involving Army military personnel. The provisions of Subpart E of this part and the VRS automated system provide for the collection of off post traffic incident reports and data. As provided in AR 190–45, civilian law enforcement agencies are considered routine users of Army law enforcement data and will be granted access to data when available from Army law enforcement systems of records. Off-installation traffic activities in overseas areas are governed by formal agreements with the host nation government. Procedures should be established to process reports received from civil authorities on serious traffic violations, accidents, and intoxicated driving incidents involving persons subject to this part. The exchange of information is limited to Army and Air Force military personnel. Provost marshals will not collect and use data concerning civilian employees, family members, and contract personnel except as allowed by state and Federal laws.

§ 634.41 Compliance with State laws.

(a) Installation commanders will inform service members, contractors and DOD civilian employees to comply with State and local traffic laws when operating government motor vehicles.

(b) Commanders will coordinate with the proper civil law enforcement agency before moving Government vehicles that exceed legal limits or regulations or that may subject highway users to unusual hazards. (See AR 55–162/OPNAVINST 4600.11D/AFJI 24–216/MCO 4643.5C).

(c) Installation commanders will maintain liaison with civil enforcement agencies and encourage the following:

(1) Release of a Government vehicle operator to military authorities unless one of the following conditions exists.

(i) The offense warrants detention.

(ii) The person's condition is such that further operation of a motor vehicle could result in injury to the person or others.

(2) Prompt notice to military authorities when military personnel or drivers of Government motor vehicles have—

(i) Committed serious violations of civil traffic laws.

(ii) Been involved in traffic accidents.

(3) Prompt notice of actions by a State or host nation to suspend, revoke, or restrict the State or host nation driver's license (vehicle operation privilege) of persons who—

(i) Operate Government motor vehicles.

(ii) Regularly operate a POV on the installation. (See also § 634.16).

§ 634.42 Civil-military cooperative programs.

(a) *State-Armed Forces Traffic Workshop Program.* This program is an organized effort to coordinate military and civil traffic safety activities throughout a State or area. Installation commanders will cooperate with State and local officials in this program and provide proper support and participation.

(b) *Community-Installation Traffic Workshop Program.* Installation commanders should establish a local workshop program to coordinate the installation traffic efforts with those of local communities. Sound and practical traffic planning depends on a balanced program of traffic enforcement, engineering, and education. Civilian and military legal and law enforcement officers, traffic engineers, safety officials, and public affairs officers should take part.

Subpart E—Driving Records and the Traffic Point System

§ 634.43 Driving records.

Each Service and DLA will use its own form to record vehicle traffic accidents, moving violations, suspension or revocation actions, and traffic point assessments involving military and DOD civilian personnel, their family members, and other personnel operating motor vehicles on a military installation. Army installations will use DA Form 3626 (Vehicle Registration/Driver Record) for this purpose. Table 5–1of Part 634 prescribes

mandatory minimum or maximum suspension or revocation periods. Traffic points are not assessed for suspension or revocation actions.

Table 5–1 of Part 634 Suspension/Revocation of Driving Privileges (See Notes 1 and 2)

Assessment 1: Two-year revocation is mandatory on determination of facts by installation commander. (For Army, 5-year revocation is mandatory.)

Violation: Driving while driver's license or installation driving privileges are under suspension or revocation.

Assessment 2: One-year revocation is mandatory on determination of facts by installation commander.

Violation: Refusal to submit to or failure to complete chemical tests (implied consent).

Assessment 3: One-year revocation is mandatory on conviction.

Violation: A. Manslaughter (or negligent homicide by vehicle) resulting from the operation of a motor vehicle.

B. Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor (0.08% or greater on DOD installations; violation of civil law off post).

C. Driving a motor vehicle while under the influence of any narcotic, or while under the influence of any other drug (including alcohol) to the degree rendered incapable of safe vehicle operation.

D. Use of a motor vehicle in the commission of a felony. Fleeing the scene of an accident involving death or personal injury (hit and run).

E. Perjury or making a false statement or affidavit under oath to responsible officials relating to the ownership or operation of motor vehicles.

F. Unauthorized use of a motor vehicle belonging to another, when the act does not amount to a felony.

Assessment 4: Suspension for a period of 6 months or less or revocation for a period not to exceed 1 year is discretionary.

Violation: A. Mental or physical impairment (not including alcohol or other drug use) to the degree rendered incompetent to drive.

B. Commission of an offense in another State which, if committed on the installation, would be grounds for suspension or revocation.

C. Permitting an unlawful or fraudulent use of an official driver's license.

D. Conviction of fleeing, or attempting to elude, a police officer.

E. Conviction of racing on the highway.

Assessment 5: Loss of OF 46 for minimum of 6 months is discretionary.

Violation: Receiving a second 1-year suspension or revocation of driving privileges within 5 years.

Notes

1. When imposing a suspension or revocation because of an off-installation offense, the effective date should be the same as the date of civil conviction, or the date that State or host-nation driving privileges are suspended or revoked. This effective date can be retroactive.

2. No points are assessed for revocation or suspension actions. Except for implied

consent violations, revocations must be based on a conviction by a civilian court or court-martial, nonjudicial punishment under Article 15, UCMJ, or a separate hearing as addressed in this part. If revocation for implied consent is combined with another revocation, such as 1 year for intoxicated driving, revocations may run consecutively (total of 24 months) or concurrently (total of 12 months). The installation commander's policy should be applied systematically and not on a case-by-case basis.

§ 634.44 The traffic point system.

The traffic point system provides a uniform administrative device to impartially judge driving performance of Service and DLA personnel. This system is not a disciplinary measure or a substitute for punitive action. Further, this system is not intended to interfere in any way with the reasonable exercise of an installation commander's prerogative to issue, suspend, revoke, deny, or reinstate installation driving privileges.

§ 634.45 Point system application.

(a) The Services and DLA are required to use the point system and procedures prescribed in this section without change.

(b) The point system in table 5–2 of this part applies to all operators of U.S. Government motor vehicles, on or off Federal property. The system also applies to violators reported to installation officials in accordance with § 634.32.

(c) Points will be assessed when the person is found to have committed a violation and the finding is by either the unit commander, civilian supervisor, a military or civilian court (including a U.S. Magistrate), or by payment of fine, forfeiture of pay or allowances, or posted bond, or collateral.

Table 5–2 of Part 634 Point Assessment for Moving Traffic Violations (See Note 1)

- A. Violation: Reckless driving (willful and wanton disregard for the safety of persons or property).
Points assessed: 6
- B. Violation: Owner knowingly and willfully permitting a physically impaired person to operate the owner's motor vehicle.
Points assessed: 6
- C. Violation: Fleeing the scene (hit and run)-property damage only.
Points assessed: 6
- D. Violation: Driving vehicle while impaired (blood-alcohol content more than 0.05 percent and less than 0.08 percent).
Points assessed: 6
- E. Violation: Speed contests.
Points assessed: 6
- F. Violation: Speed too fast for conditions.
Points assessed: 2
- G. Violation: Speed too slow for traffic conditions, and/or impeding the flow of traffic, causing potential safety hazard.
Points assessed: 2

H. Violation: Failure of operator or occupants to use available restraint system devices while moving (operator assessed points).
Points assessed: 2

I. Violation: Failure to properly restrain children in a child restraint system while moving (when child is 4 years of age or younger or the weight of child does not exceed 45 pounds).
Points assessed: 2

J. Violation: One to 10 miles per hour over posted speed limit.
Points assessed: 3

K. Violation: Over 10 but not more than 15 miles per hour above posted speed limit.
Points assessed: 4

L. Violation: Over 15 but not more than 20 miles per hour above posted speed limit.
Points assessed: 5

M. Violation: Over 20 miles per hour above posted speed limit.
Points assessed: 6

N. Violation: Following too close.
Points assessed: 4

O. Violation: Failure to yield right of way to emergency vehicle.
Points assessed: 4

P. Violation: Failure to stop for school bus or school-crossing signals.
Points assessed: 4

Q. Violation: Failure to obey traffic signals or traffic instructions of an enforcement officer or traffic warden; or any official regulatory traffic sign or device requiring a full stop or yield of right of way; denying entry; or requiring direction of traffic.
Points assessed: 4

R. Violation: Improper passing.
Points assessed: 4

S. Violation: Failure to yield (no official sign involved).
Points assessed: 4

T. Violation: Improper turning movements (no official sign involved).
Points assessed: 3

U. Violation: Wearing of headphones/earphones while driving motor vehicles (two or more wheels).
Points assessed: 3

V. Violation: Failure to wear an approved helmet and/or reflectorized vest while operating or riding on a motorcycle, MOPED, or a three or four-wheel vehicle powered by a motorcycle-like engine.
Points assessed: 3

W. Violation: Improper overtaking.
Points assessed: 3

X. Violation: Other moving violations (involving driver behavior only).
Points assessed: 3

Y. Violation: Operating an unsafe vehicle. (See Note 2).
Points assessed: 2

Z. Violation: Driver involved in accident is deemed responsible (only added to points assessed for specific offenses).
Points assessed: 1

Notes

1. When two or more violations are committed on a single occasion, points may be assessed for each individual violation.
2. This measure should be used for other than minor vehicle safety defects or when a driver or registrant fails to correct a minor

defect (for example, a burned out headlight not replaced within the grace period on a warning ticket).

§ 634.46 Point system procedures.

(a) Reports of moving traffic violations recorded on DD Form 1408 or DD Form 1805 will serve as a basis for determining point assessment. For DD Form 1408, return endorsements will be required from commanders or supervisors.

(b) On receipt of DD Form 1408 or other military law enforcement report of a moving violation, the unit commander, designated supervisor, or person otherwise designated by the installation commander will conduct an inquiry. The commander will take or recommend proper disciplinary or administrative action. If a case involves judicial or nonjudicial actions, the final report of action taken will not be forwarded until final adjudication.

(c) On receipt of the report of action taken (including action by a U.S. Magistrate Court on DD Form 1805), the installation law enforcement officer will assess the number of points appropriate for the offense, and record the traffic points or the suspension or revocation of driving privileges on the person's driving record. Except as specified otherwise in this part and other Service/ DLA regulations, points will not be assessed or driving privileges suspended or revoked when the report of action taken indicates that neither disciplinary nor administrative action was taken.

(d) Installation commanders may require the following driver improvement measures as appropriate:

(1) Advisory letter through the unit commander or supervisor to any person who has acquired six traffic points within a 6-month period.

(2) Counseling or driver improvement interview, by the unit commander, of any person who has acquired more than six but less than 12 traffic points within a 6-month period. This counseling or interview should produce recommendations to improve driver performance.

(3) Referral for medical evaluation when a driver, based on reasonable belief, appears to have mental or physical limits that have had or may have an adverse affect on driving performance.

(4) Attendance at remedial driver training to improve driving performance.

(5) Referral to an alcohol or drug treatment or rehabilitation facility for evaluation, counseling, or treatment. This action is required for active military personnel in all cases in which

alcohol or other drugs are a contributing factor to a traffic citation, incident, or accident.

(e) An individual's driving privileges may be suspended or revoked as provided by this part regardless of whether these improvement measures are accomplished.

(f) Persons whose driving privileges are suspended or revoked (for one violation or an accumulation of 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months) will be notified in writing through official channels (§ 634.11). Except for the mandatory minimum or maximum suspension or revocation periods prescribed by table 5-1 of this part, the installation commander will establish periods of suspension or revocation. Any revocation based on traffic points must be no less than 6 months. A longer period may be imposed on the basis of a person's overall driving record considering the frequency, flagrancy, severity of moving violations, and the response to previous driver improvement measures. In all cases, military members must successfully complete a prescribed course in remedial driver training before driving privileges are reinstated.

(g) Points assessed against a person will remain in effect for point accumulation purposes for 24 consecutive months. The review of driver records to delete traffic points should be done routinely during records update while recording new offenses and forwarding records to new duty stations. Completion of a revocation based on points requires removal from the driver record of all points assessed before the revocation.

(h) Removal of points does not authorize removal of driving record entries for moving violations, chargeable accidents, suspensions, or revocations. Record entries will remain posted on individual driving records for the following periods of time.

(1) Chargeable nonfatal traffic accidents or moving violations—3 years.

(2) Nonmandatory suspensions or revocations—5 years.

(3) Mandatory revocations—7 years.

§ 634.47 Disposition of driving records.

Procedures will be established to ensure prompt notice to the installation law enforcement officer when a person assigned to or employed on the installation is being transferred to another installation, being released from military service, or ending employment.

(a) If persons being transferred to a new installation have valid points or other entries on the driving records, the

law enforcement officer will forward the records to the law enforcement officer of the gaining installation. Gaining installation law enforcement officers must coordinate with applicable commanders and continue any existing suspension or revocation based on intoxicated driving or accumulation of traffic points. Traffic points for persons being transferred will continue to accumulate as specified in § 634.46 (g).

(b) Driving records of military personnel being discharged or released from active duty will be retained on file for 2 years and then destroyed. In cases of immediate reenlistment, change of officer component or military or civilian retirement when vehicle registration is continued, the record will remain active.

(c) Driving records of civilian personnel terminating employment will be retained on file for 2 years and then destroyed.

(d) Driving records of military family members containing point assessments or other entries will be forwarded to the sponsor's gaining installation in the same manner as for service members. At the new installation, records will be analyzed and made available temporarily to the sponsor's unit commander or supervisor for review.

(e) Driving records of retirees electing to retain installation driving privileges will be retained. Points accumulated or entries on the driver record regarding suspensions, revocations, moving violations, or chargeable accidents will not be deleted from driver records except per § 634.46 (g) and (h).

(f) Army users will comply with paragraphs (a) and (d) of this section by mailing the individual's DA Form 3626 to the gaining installation provost marshal.

Subpart F—Impounding Privately Owned Vehicles

§ 634.48 General.

This subpart provides the standards and procedures for law enforcement personnel when towing, inventorying, searching, impounding, and disposing of POVs. This policy is based on:

(a) The interests of the Services and DLA in crime prevention, traffic safety, and the orderly flow of vehicle traffic movement.

(b) The vehicle owner's constitutional rights to due process, freedom from unreasonable search and seizure, and freedom from deprivation of private property.

§ 634.49 Standards for impoundment.

(a) POVs should not be impounded unless the vehicles clearly interfere with

ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(b) The impoundment of a POV would be inappropriate when reasonable alternatives to impoundment exist.

(1) Attempts should be made to locate the owner of the POV and have the vehicle removed.

(2) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is found.

(3) Another responsible person may be allowed to drive or tow the POV with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that law enforcement personnel are not responsible for safeguarding the POV.

(c) Impounding of POVs is justified when any of the following conditions exist:

(1) The POV is illegally parked—

(i) On a street or bridge, in a tunnel, or is double parked, and interferes with the orderly flow of traffic.

(ii) On a sidewalk, within an intersection, on a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(iii) When blocking an emergency exit door of any public place (installation theater, club, dining hall, hospital, and other facility).

(iv) In a "tow-away" zone that is so marked with proper signs.

(2) The POV interferes with—

(i) Street cleaning or snow removal operations and attempts to contact the owner have been unsuccessful.

(ii) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(3) The POV has been used in a crime or contains evidence of criminal activity.

(4) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(5) The POV is mechanically defective and is a menace to others using the public roadways.

(6) The POV is disabled by a traffic incident and the operator is either unavailable or physically incapable of

having the vehicle towed to a place of safety for storage or safekeeping.

(7) Law enforcement personnel reasonably believe the vehicle is abandoned.

§ 634.50 Towing and storage.

(a) Impounded POVs may be towed and stored by either the Services and DLA or a contracted wrecker service depending on availability of towing services and the local commander's preference.

(b) The installation commander will designate an enclosed area on the installation that can be secured by lock and key for an impound lot to be used by the military or civilian wrecker service. An approved impoundment area belonging to the contracted wrecker service may also be used provided the area assures adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the installation law enforcement officer or designated individual.

(c) Temporary impoundment and towing of POVs for violations of the installation traffic code or involvement in criminal activities will be accomplished under the direct supervision of law enforcement personnel.

§ 634.51 Procedures for impoundment.

(a) *Unattended POVs.* (1) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on POVs considered unattended. This action will be documented by an entry in the installation law enforcement desk journal or blotter.

(2) The owner will be allowed 3 days from the date the POV is tagged to remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after 3 days, it will be removed by the installation towing service or the contracted wrecker service. If a contracted wrecker service is used, a DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the installation law enforcement office.

(3) After the vehicle has been removed, the installation law enforcement officer or the contractor will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(i) An inventory listing personal property will be done to protect the owner, law enforcement personnel, the contractor, and the commander.

(ii) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles

should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(iii) Personal property must be placed in a secure area for safekeeping.

(4) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(b) *Stolen POVs or vehicles involved in criminal activity.* (1) When the POV is to be held for evidentiary purposes, the vehicle should remain in the custody of the applicable Service or DLA until law enforcement purposes are served.

(2) Recovered stolen POVs will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen, as appropriate.

(3) A POV held on request of other authorities will be retained in the custody of the applicable Service or DLA until the vehicle can be released to such authorities.

§ 634.52 Search incident to impoundment based on criminal activity.

Search of a POV in conjunction with impoundment based on criminal activity will likely occur in one of the following general situations:

(a) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be obtained before searching.

(b) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle

may be conducted without search authority. (Air Force, see AFP 125-2).

§ 634.53 Disposition of vehicles after impoundment.

(a) If a POV is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(b) If the vehicle is unclaimed after 120 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(1) Release to the lienholder, if known.

(2) Processed as abandoned property in accordance with DOD 4160.21-M.

(i) Property may not be disposed of until diligent effort has been made to find the owner; or the heirs, next of kin, or legal representative of the owner.

(ii) The diligent effort to find one of those mentioned in paragraph (a) of this section shall begin not later than 7 days after the date on which the property comes into custody or control of the law enforcement agency.

(iii) The period for which this effort is continued may not exceed 45 days.

(iv) If the owner or those mentioned in § 634.52 are determined, but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address.

(v) When diligent effort to determine those mentioned in paragraph (b)(2)(iv) of this section is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than \$500, the law enforcement official may not dispose of the property until 45 days after the date it is received at the storage point.

(c) All contracts for the disposal of abandoned vehicles must comply with 10 U.S.C. 2575.

Subpart G—List of State Driver's License Agencies

§ 634.54 List of State Driver's License Agencies.

Notification of State Driver's License Agencies. The installation commander will notify the State driver's license agency of those personnel whose installation driving privileges are revoked for 1 year or more, following final adjudication of the intoxicated

driving offense or for refusing to submit to a lawful blood-alcohol content test in accordance with § 634.8. This notification will include the basis for the suspension and the blood alcohol level. The notification will be sent to the State in which the driver's license was issued. State driver's license agencies are listed as follows:

Alabama: Motor Vehicle Division, 2721 Gunter Park Drive, Montgomery, AL 36101, (205) 271-3250.

Alaska: Motor Vehicle Division, P.O. Box 100960, Anchorage, AK 99510, (907) 269-5572.

Arizona: Motor Vehicle Division, 1801 West Jefferson Street, Phoenix, AZ 85007, (602) 255-7295.

Arkansas: Motor Vehicle Division, Joel & Ledbetter Bldg., 7th and Wolfe Streets, Little Rock, AR 72203, (501) 371-1886.

California: Department of Motor Vehicles, P.O. Box 932340, Sacramento, CA 94232, (916) 445-0898.

Colorado: Motor Vehicle Division, 140 West Sixth Avenue, Denver, CO 80204, (303) 866-3158.

Connecticut: Department of Motor Vehicles, 60 State Street, Wethersfield, CT 06109, (203) 566-5904.

Delaware: Motor Vehicle Director, State Highway Administration Bldg., P.O. Box 698, Dover, DE 19903, (302) 736-4421.

District of Columbia: Department of Transportation, Bureau of Motor Vehicles, 301 C Street, NW., Washington, DC 20001, (202) 727-5409.

Florida: Division of Motor Vehicles, Neil Kirkman Building, Tallahassee, FL 32301, (904) 488-6921.

Georgia: Motor Vehicle Division, Trinity-Washington Bldg., Room 114, Atlanta, GA 30334, (404) 656-4149.

Hawaii: Division of Motor Vehicle and Licensing, 1455 S. Benetania Street, Honolulu, HI 96814, (808) 943-3221.

Idaho: Transportation Department, 3311 State Street, P.O. Box 34, Boise, ID 83731, (208) 334-3650.

Illinois: Secretary of State, Centennial Building, Springfield, IL 62756, (217) 782-4815.

Indiana: Bureau of Motor Vehicles, State Office Building, Room 901, Indianapolis, IN 46204, (317) 232-2701.

Iowa: Department of Transportation Office of Operating Authority, Lucas Office Bldg., Des Moines, IA 50319, (515) 281-5664.

Kansas: Department of Revenue, Division of Vehicles, Interstate Registration Bureau, State Office

Bldg., Topeka, KS 66612, (913) 296-3681.

Kentucky: Department of Transportation, New State Office Building, Frankfort, KY 40622, (502) 564-4540.

Louisiana: Motor Vehicle Administrator, S. Foster Drive, Baton Rouge, LA 70800, (504) 925-6304.

Maine: Department of State, Motor Vehicle Division, Augusta, ME 04333, (207) 289-5440.

Maryland: Motor Vehicle Administration, 6601 Ritchie Highway, NE., Glen Burnie, MD 21062, (301) 768-7000.

Massachusetts: Registry of Motor Vehicle, 100 Nashua Street, Boston, MA 02114, (617) 727-3780.

Michigan: Department of State, Division of Driver Licenses and Vehicle Records, Lansing, MI 48918, (517) 322-1486.

Minnesota: Department of Public Safety, 108 Transportation Building, St. Paul, MN 55155, (612) 296-2138.

Mississippi: Office of State Tax Commission, Woolfolk Building, Jackson, MS 39205, (601) 982-1248.

Missouri: Department of Revenue, Motor Vehicles Bureau, Harry S. Truman Bldg., 301 W. High Street, Jefferson City, MO 65105, (314) 751-3234.

Montana: Highway Commission, Box 4639, Helena, MT 59604, (406) 449-2476.

Nebraska: Department of Motor Vehicles, P.O. Box 94789, Lincoln, NE 68509, (402) 471-3891.

Nevada: Department of Motor Vehicles, Carson City, NV 89711, (702) 885-5370.

New Hampshire: Department of Safety, Division of Motor Vehicles, James H. Haynes Bldg., Concord, NH 03305, (603) 271-2764.

New Jersey: Motor Vehicle Division, 25 S. Montgomery Street, Trenton, NJ 08666, (609) 292-2368.

New Mexico: Motor Transportation Division, Joseph M. Montoya Building, Santa Fe, NM 87503, (505) 827-0392.

New York: Division of Motor Vehicles, Empire State Plaza, Albany, NY 12228, (518) 474-2121.

North Carolina: Division of Motor Vehicles, Motor Vehicles Bldg., Raleigh, NC 27697, (919) 733-2403.

North Dakota: Motor Vehicle Department, Capitol Grounds, Bismarck, ND 58505, (701) 224-2619.

Ohio: Bureau of Motor Vehicles, P.O. Box 16520, Columbus, OH 43216, (614) 466-4095.

Oklahoma: Oklahoma Tax Commission, Motor Vehicle Division, 2501 Lincoln Boulevard, Oklahoma City, OK 73194, (405) 521-3036

Oregon: Motor Vehicles Division, 1905 Lana Avenue, NE., Salem, OR 97314, (503) 378-6903.

Pennsylvania: Department of Transportation, Bureau of Motor Vehicles, Transportation and Safety Bldg., Harrisburg, PA 17122, (717) 787-3130.

Rhode Island: Department of Motor Vehicles, State Office Building, Providence, RI 02903, (401) 277-6900.

South Carolina: Motor Vehicle Division, P.O. Drawer 1498, Columbia, SC 29216, (803) 758-5821.

South Dakota: Division of Motor Vehicles, 118 W. Capitol, Pierre, SD 57501, (605) 773-3501.

Tennessee: Department of Revenue, Motor Vehicle Division, 500 Deaderick Street, Nashville, TN 37242, (615) 741-1786.

Texas: Department of Highways and Public Transportation, Motor Vehicle Division, 40th and Jackson Avenue, Austin, TX 78779, (512) 475-7686.

Utah: Motor Vehicle Division State Fairgrounds, 1095 Motor Avenue, Salt Lake City, UT 84116, (801) 533-5311.

Vermont: Department of Motor Vehicles, State Street, Montpelier, VT 05603, (802) 828-2014.

Virginia: Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23220, (804) 257-1855.

Washington: Department of Licensing, Highways-Licenses Building, Olympia, WA 98504, (206) 753-6975.

West Virginia: Department of Motor Vehicles, 1800 Washington Street, East, Charleston, WV 25317, (304) 348-2719.

Wisconsin: Department of Transportation Reciprocity and Permits, P.O. Box 7908, Madison, WI 53707, (608) 266-2585.

Wyoming: Department of Revenue, Policy Division, 122 W. 25th Street, Cheyenne, WY 82002, (307) 777-5273.

Guam: Deputy Director, Revenue and Taxation, Government of Guam, Agana, Guam 96910, (no phone number available).

Puerto Rico: Department of Transportation and Public Works, Bureau of Motor Vehicles, P.O. Box 41243, Minillas Station, Santurce, Puerto Rico 00940, (809) 722-2823.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-05-032]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain in the closed position from April 27, 2005 through April 29, 2005. This temporary deviation is necessary to facilitate bridge maintenance.

DATES: This deviation is effective from April 27, 2005 through April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668-7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate rehabilitation repairs at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from April 27, 2005 through April 29, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 5, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07-05-009]

RIN 1625-AA09

Drawbridge Operation Regulation; Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing drawbridge operation regulations for seven bascule bridges within the Seventh Coast Guard District. The seven bascule bridges were removed and the regulations governing their operation are no longer needed.

DATES: This rule is effective April 12, 2005.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Seventh Coast Guard District, Bridge Branch, 909 SE 1st Avenue, Room 432, Miami, Florida 33131, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 415-6743. The Seventh District Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Evelyn Smart, Bridge Branch, at (305) 415-6753.

SUPPLEMENTARY INFORMATION:

Good Cause

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Public comment is not necessary since the purpose of the affected regulations is to regulate the opening and closing of bridges that have been removed. For the same reasons under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

The State of Florida (Department of Transportation) has removed five bascule bridges, removing the need for their associated regulations. The following bridges have been removed:

- Brooks Memorial (SE 17th Street) bascule span bridge across the Atlantic Intracoastal Waterway, mile 1065.9 at Fort Lauderdale, Broward County, Florida. (33 CFR 117.261(ii))

b. MacArthur Causeway bascule span bridge across the Atlantic Intracoastal Waterway, mile 1088.8 at Miami, Miami-Dade County, Florida. (33 CFR 117.261(o))

c. Fuller Warren (I10–I–95) bascule span bridge across the St. Johns River, mile 25.4 at Jacksonville, Duval County, Florida. (33 CFR 117.325(b))

d. Vilano Beach (State Road A1A) bascule span bridge across the Atlantic Intracoastal Waterway, mile 778 at Vilano Beach, Duval County, Florida. (33 CFR 117.261(c))

e. Ringling Causeway (State Road 780) bascule span bridge across the Gulf Intracoastal Waterway, mile 73.6 at Sarasota, Sarasota County, Florida. (33 CFR 117.287(c))

The regulations governing the operation of the above mentioned bascule bridges are to be removed.

The County of Miami-Dade (Department of Public Works) constructed a new bascule bridge of modern safe design to replace the then existing West Venetian Causeway bascule bridge across the Atlantic Intracoastal Waterway, mile 1088.6 at Miami, Miami-Dade County, Florida. The previous bascule span bridge was removed and the regulation governing the operation of that bridge remains in 33 CFR 117.261(nn). The USCG is removing 33 CFR 117.261(nn) from the Code of Federal Regulations as the new bascule bridge opens upon signal as provided for in 33 CFR 117.5.

The State of South Carolina (Department of Transportation) has constructed a new fixed bridge of modern safe design to replace the then existing Maybank Highway bascule span bridge across the Stono River, mile 11.0 at Johns Island, Charleston County, South Carolina. The previous bascule span bridge that serviced the area was removed even though the regulation governing the operation of that bridge still remains at 33 CFR 117.937. The USCG is removing 33 CFR 117.937 from the Code of Federal Regulations since the fixed bridge does not require a bridge operating regulation.

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).

This rule removes regulations that are obsolete because the bridges they govern no longer exist.

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 will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulations being removed apply to bridges that no longer exist.

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.

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 an 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 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 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.

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

This 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.ID, 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 (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.261 [Amended]

■ 2. In § 117.261, remove and reserve paragraphs (c), (ii), (nn) and (oo).

§ 117.287 [Amended]

■ 3. In § 117.287, remove and reserve paragraph (c).

§ 117.325 [Amended]

■ 4. In § 117.325, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

§ 117.937 [Removed]

■ 5. Remove § 117.937.

Dated: March 31, 2005.

D.B. Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–7325 Filed 4–11–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–GA–0002–200504(a); FRL–7898–5]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (GAEPD), on December 18, 2003. These revisions pertain to rules for Enhanced Inspection and Maintenance (I/M). These revisions were the subject of a public hearing held on November 5, 2003, adopted by the Board of Natural Resources on December 3, 2003, and became State effective on December 25, 2003.

DATES: This direct final rule is effective June 13, 2005 without further notice, unless EPA receives adverse comment by May 12, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–GA–0002, by one of the following methods:

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

2. Agency Web site: <http://docket.epa.gov/rmepub/> RME, EPA’s

electronic public docket and comment system, is EPA’s preferred method for receiving comments. Once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: martin.scott@epa.gov.

4. Fax: (404) 562–9019.

5. Mail: “R04–OAR–2004–GA–0002”, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. Hand Delivery or Courier. Deliver your comments to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2004–GA–0002. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA RME website and the federal [regulations.gov](http://www.regulations.gov) website are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9036. Mr. Martin can also be reached via electronic mail at martin.scott@epa.gov. **SUPPLEMENTARY INFORMATION:** The use of "we," "us," or "our" in this document refers to EPA.

Table of Contents

- I. General Information
- II. Background
- III. Analysis of State's Submittal
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Air Protection Branch, Georgia Environmental Protection Division, Georgia Department

of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363-7000.

II. Background

The EPA is approving the SIP revisions submitted by the State of Georgia, through the GAEPD, on December 18, 2003. These revisions pertain to rules for Enhanced Inspection and Maintenance (I/M). These revisions were the subject of a public hearing held on November 5, 2003, adopted by the Board of Natural Resources on December 3, 2003, and became effective on December 25, 2003.

III. Analysis of State's Submittal

Rule 391-3-20-.01(y) "I/M Test Manual" is being revised to update the reference to the I/M Test Manual to reference the current version dated September 23, 2003.

Rule 391-3-20-17(2) "Waivers" is being amended to make the annual adjustment of the repair waiver limit using the consumer price index data as published by the Federal Bureau of Labor Statistics. For test year 2004 the limit will be \$673.00.

IV. Final Action

EPA is approving the aforementioned changes to the Georgia SIP because they are consistent with the Clean Air Act and Agency requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 13, 2005 without further notice unless the Agency receives adverse comments by May 12, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2005 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule,

we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report

containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 28, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart L—Georgia

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

§ 52.570 Identification of plan.

* * * * *
(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391-3-20	Enhanced Inspection and Maintenance	12/25/2003	4/12/05 [Insert first page number of publication].	

* * * * *
[FR Doc. 05-7308 Filed 4-11-05; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-80-1-7353; FRL-7897-7]

Approval and Promulgation of Implementation Plans; Texas; 15% Rate-of-Progress Plan and Motor Vehicle Emissions Budgets, Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision for the State of Texas for the 15% Rate-of-Progress Plan (ROP) and 15% ROP

Motor Vehicle Emissions Budget (MVEB) for the Dallas/Fort Worth (DFW) ozone nonattainment area. This plan shows planned emission reductions required by the Clean Air Act (Act) from 1990 to 1996 to improve air quality in the Dallas/Fort Worth Area. The reductions are from the 1990 base year emissions inventory. The MVEBs are used for determining conformity of transportation projects to the SIP. This action satisfies the Act's requirements for an ozone nonattainment area's 15% Rate-of-Progress Plan and approves the MVEBs under the ROP Plan.

DATES: This rule is effective on May 12, 2005.

ADDRESSES: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas

75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT:

Herbert R. Sherrow, Jr., Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7237; fax number 214-665-7263; e-mail address sherrow.herb@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

- I. What Action Is EPA Taking?
- II. What Is the Background for This Action?
- III. What Comments Were Received During the Public Comment Period, January 18, 2001, to March 19, 2001?
- IV. Final Action
- V. Statutory and Executive Order Reviews

1. What Action Is EPA Taking?

EPA is taking full approval action on the 15% ROP plan for the DFW ozone nonattainment area, submitted by Texas on August 8, 1996, since we have now finalized approval of the State's motor vehicle Inspection/Maintenance (I/M) program for the DFW area. We are also taking final action on the Motor Vehicle Emissions Budget (MVEB) contained in the 15% ROP Plan.

II. What Is the Background for This Action?

We proposed full approval of the 15% ROP plan on January 28, 2001. The Plan was submitted on August 8, 1996. The Plan was given conditional, interim approval on November 10, 1998, pending corrections to the DFW I/M program (63 FR 62943). It was given conditional, interim approval because it relied on emissions reductions from the I/M program that received conditional, interim approval.

For further information on the I/M conditional, interim approval, see 62 FR 37138, published on July 11, 1997. We found later that the State met the conditions of the conditional approval. We removed the conditions and granted Texas a final interim approval of the I/M program on April 23, 1999. See, 64 FR 19910.

Texas then submitted significant revisions to the I/M program for the DFW area. The revisions expanded the program from the 2 core nonattainment counties to the 4 counties in the nonattainment area plus 5 additional counties and upgraded the stringency of the program. As a result of these improvements in the I/M program, we took final approval action on the I/M program on November 14, 2001, (66 FR 57261).

We indicated in the proposed full approval of the DFW 15% plan that the plan would not be finalized until final action on the I/M program was complete. Therefore, because we have completed final action on the I/M program, we can now take final action on the 15% ROP Plan and the associated MVEB.

The MVEB in the plan is for Volatile Organic Compounds (VOC). The VOC budget is 165.49 tons per day for 1996. There is no requirement for a Nitrogen Oxides (NO_x) budget in the 15% plans.

We have received no new information that would change the approvability of the ROP target calculations and none of the credits relied upon for meeting the ROP targets have changed since our proposal date. Therefore, this plan meets the Reasonable Further Progress requirements of the Act (section 182(b)(1)).

Please refer to 66 FR 4764, January 18, 2001, and its technical support document (TSD) for additional details on the 15% Plan, as well as the TSD for the November 1998 proposal action.

III. What Comments Were Received During the Public Comment Period, January 18, 2001, to March 19, 2001?

We did not receive any comments on the 15% ROP Plan or the associated MVEB.

IV. Final Action

EPA is approving the 15% Rate of Progress plan and the Motor Vehicle Emissions Budgets submitted by Texas on August 8, 1996, for the DFW ozone nonattainment area. The VOC MVEB for the ROP plan is 165.49 tons per day for 1996.

V. Statutory and Executive Order Reviews

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

any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

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

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 1, 2005.

Richard E. Greene,
Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures" is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP Provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Approval of the 15% Rate of Progress Plan and the Motor Vehicle Emissions Budget.	Dallas-Fort Worth	9/8/1996	4/12/2005 [Insert FR page number where document begins].	

[FR Doc. 05-7305 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-TX-0019; FRL-7898-7]

Approval and Promulgation of Implementation Plans; Texas; Agreed Orders in the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). This rule making covers eight Agreed Orders with six companies in the Beaumont/Port Arthur (B/PA) nonattainment area. We are approving the eight Agreed Orders between the State of Texas and six companies in Southeast Texas as a strengthening of the Texas SIP. These Agreed Orders will contribute to the improvement in air quality in the B/PA nonattainment area and continue to contribute to the maintenance of the ozone standard in the southeastern portion of the State of Texas. The EPA

is approving this SIP revision in accordance with the requirements of the Federal Clean Air Act (the Act), sections 110 and 116.

DATES: This rule is effective on June 13, 2005 without further notice, unless EPA receives relevant adverse comment by May 12, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06-OAR-2005-TX-0019, by one of the following methods:

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

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

- U.S. EPA Region 6 "Contact Us" web site: <http://epa.gov/region6/r6coment.htm> Please click on "6PD"

(Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr Thomas Diggs at diggs.thomas@epa.gov. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R06-OAR-2005-TX-0019. EPA's policy is that all comments received will be included in the public file without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the following state air agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7242; fax number 214-665-7263; e-mail address donaldson.guy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA. Please note that if we receive relevant adverse comment(s) on an amendment, paragraph, or section of this rule and if that provision is independent of the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

Outline

- I. What Action Is EPA Taking?
- II. What Is a State Implementation Plan?
- III. What Does Federal Approval of a SIP Mean to Me?
- IV. What Areas in Texas Will This Action Affect?
- V. What Does the Agreed Order Between the TCEQ and ExxonMobil Oil Corporation, Jefferson County, Require?
- VI. What Do the Agreed Orders Between the TCEQ and Huntsman Petrochemical Corporation, Jefferson County, Require?
- VII. What Does the Agreed Order Between the TCEQ and ISP Elastomers, Jefferson County, Require?
- VIII. What Do the Agreed Orders Between the TCEQ and Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, Require?
- IX. What Does the Agreed Order Between the TCEQ and Motiva Enterprises LLC, Jefferson County, Require?
- X. What Does the Agreed Order Between the TCEQ and Premcor Refining Group, Jefferson County, Require?
- XI. Final Action
- XII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

On January 10, 2005 the Texas Commission on Environmental Quality (TCEQ) submitted a SIP revision which included the State adopted Agreed Orders with ExxonMobil Oil Corporation, Mobil Chemical Company (Division of ExxonMobil Oil Corporation), ISP Elastomers, Huntsman Petrochemical Corporation Port Neches Plant, Huntsman Petrochemical Corporation Port Arthur Plant, Premcor Refining Group, Inc., and Motiva Enterprises LLC in the Beaumont/Port Arthur nonattainment area. These

Agreed Orders were developed as a result of the collaborative efforts between the TCEQ, local environmental organizations and a local industry forum. The Agreed Orders SIP submittal delineates permanent reductions of volatile organic compounds, oxides of nitrogen, hydrogen sulfide, benzene, carbon monoxide, ammonia, and particulate matter. They also include air monitoring activities and other operational activities. The Companies entered voluntarily into the Agreed Orders and we are adopting them into the Texas SIP under sections 110 and 116 of the Act to make the measures federally enforceable and because the State is relying upon the Orders as a strengthening of the existing Texas SIP and for continued maintenance of the standards in the northeast part of Texas.

In this rule making we are approving under sections 110 and 116 the eight Agreed Orders between the Texas Commission on Environmental Quality and ExxonMobil Oil Corporation, Mobil Chemical Company (Division of ExxonMobil Oil Corporation)(two Orders), ISP Elastomers, Huntsman Petrochemical Corporation Port Neches Plant, Huntsman Petrochemical Corporation Port Arthur Plant, Premcor Refining Group, Inc., and Motiva Enterprises LLC in the Beaumont/Port Arthur nonattainment area.

II. What Is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that the state air quality meets the National Ambient Air Quality Standards (NAAQS) that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each state has a SIP designed to protect air quality. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

III. What Does Federal Approval of a SIP Mean to Me?

A state may enforce state regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved

SIP, both EPA and the public may also take enforcement action against violators of these regulations.

IV. What Areas in Texas Will This Action Affect?

The approval of the eight Agreed Orders will affect the Beaumont/Port Arthur (B/PA) Ozone Nonattainment area and the southeastern part of Texas. The B/PA area includes Hardin, Jefferson, and Orange Counties. The Agreed Orders will contribute to the improvement in the air quality in the B/PA area and will continue to contribute to the maintenance of the ozone standard in the southeastern portion of the State of Texas. Each company offered, individually or a combination of emission reductions, monitoring, and operational changes to be memorialized in Agreed Orders with the Texas Commission on Environmental Quality. Since we are approving the Orders into the Texas SIP, any emission reductions stipulated in these Agreed Orders are required by federal law and therefore are not surplus emissions reductions and cannot be used for the purposes of offsetting, netting, or banking. Some of the companies reserved a portion of the emissions reductions for future use; these are not stipulated to in the Agreed Orders. For further information about which companies reserved some of the emissions reductions and the types of pollutants and amounts being reserved for future use, see the Technical Support Document (TSD).

V. What Does the Agreed Order Between the TCEQ and ExxonMobil Oil Corporation, Jefferson County, Require?

ExxonMobil Oil Corporation, Jefferson County, owns and operates an oil refinery facility at 1795 Burt Street, Beaumont, Jefferson County, Texas. ExxonMobil Oil Corporation, Jefferson County, (TCEQ Account number JE-0067-I, Customer No. 601470214, Regulated Entity No. 102450756) entered into an Agreed Order (Docket No. 2004-0846-SIP) with the Texas Commission on Environmental Quality to provide reductions in the emissions of volatile organic compounds and sulfur dioxide, improve and update plant operations, and perform air monitoring. The Agreed Order has 18 stipulations and was adopted by the Commission on December 15, 2004. The Company installed, on April 4, 2004, a wet gas scrubber with oxygen enrichment on the fluid catalytic cracking unit, Emission Point Number (EPN) 06ST_003, for the reduction of sulfur dioxide. By December 31, 2005, the Company will implement improved practices and maintenance procedures

for the two ketone units to reduce VOC fugitive emissions reported under EPN 41_FUG001, EPN 41_FUG002, EPN 42_FUG001, and EPN 42_FUG002. This will be for the purpose of reducing solvent loss and thereby volatile organic compound emissions. On July 31, 2004 the Company installed and configured Vivicom Software, and replaced PtR-4 NO_x and CO emission analyzers. The installation of this software will improve data and system reliability of the continuous emissions monitoring system. By May 1, 2006, ExxonMobil will shut down six grandfathered boilers for the cogeneration unit and amend the corresponding Air Quality Permit #19566. The Company's boilers to be shut down are EPN 56SKT_015, EPN 56SKT_016, EPN 56SKT_017, EPN 56SKT_018, EPN 56SKT_019, and EPN 56SKT_032. The Company will also continue to operate two air quality monitors for the collection of data regarding sulfur dioxide in accordance with the Agreed Order entered into between the Company and the TCEQ, Docket No. 97-0827-AIR-E. These monitors will be operated until EPA has determined that the Beaumont/Port Arthur nonattainment area has attained the 8-hour ozone standard and redesignated the area to attainment or until December 31, 2008, whichever is later. The Company reserved for future use, at a minimum, 300 TPY of the SO₂ emissions reductions achieved from the installation of the wet scrubber on the fluid catalytic cracking unit. The SO₂ emissions reductions achieved by the wet scrubber installed on the fluid catalytic cracking unit, that are above 300 TPY but not exceeding 9400 TPY, are required by the Order. All of the fugitive VOC emissions reductions achieved by the improved practices and maintenance procedures for the two ketone units are required by the Order. All of the VOC emissions reductions achieved by the shutdown of the six boilers are required by the Order. TCEQ must remove permanently from the Emissions Inventory the six boilers and all of their VOC emissions. We have included the supporting documentation for this Agreed Order with our TSD dated February 14, 2005.

VI. What Do the Agreed Orders Between the TCEQ and Huntsman Petrochemical Corporation, Jefferson County, Require?

Huntsman Petrochemical Corporation owns and operates a C4 and Oxides and Olefins plant at 2701 Spur 136, Port Neches, Jefferson County, Texas. Huntsman Petrochemical Corporation, Jefferson County, Port Neches Plant (TCEQ Account Number JE-0052-V,

Customer No. 600632848, Regulated Entity No. 100219252) entered into an Agreed Order (Docket No. 2004-0882-SIP) with the Texas Commission on Environmental Quality. The Agreed Order has 14 stipulations and was adopted by the Commission on December 15, 2004. By December 31, 2004, the Company had installed and configured for use E!CEMS Software to improve the data and system reliability regarding electronic data gathered for compliance purposes. The system will improve tracking of emissions and allow for quicker response to potential problems. There are no quantifiable emission reductions from the implementation of this measure.

Huntsman Petrochemical Corporation also owns and operates an aromatics and olefins plant at 4241 Savannah Avenue, Port Arthur, Jefferson County, Texas. Huntsman Petrochemical Corporation, Jefferson County, Port Arthur Plant (TCEQ Account Number JE-0135-Q, Customer No. 600632848, Regulated Entity No. 1002192522), entered into an Agreed Order (Docket No. 2004-0845-SIP) with the Texas Commission on Environmental Quality. The Agreed Order has 15 stipulations and was adopted by the Commission on December 15, 2004. The Company was to submit, on or before September 30, 2004, amendments to Air Quality Permit # 16989 to specify and make enforceable, controls for the benzene tank emission control project listed in the Company's Emission Cap Compliance Plan dated May 15, 2002. Benzene emission reductions will occur as a result of the utilization of a thermal oxidizer system. By December 31, 2004, the Company will also install and configure for use E!CEMS Software to improve the data and system reliability regarding electronic data gathered for compliance purposes. All of the emissions reductions that will be achieved by the benzene tank emission control project are required by the Agreed Order. We have included the supporting documentation for these Agreed Orders with our TSD dated February 14, 2005.

VII. What Does the Agreed Order Between the TCEQ and ISP Elastomers, Jefferson County, Require?

ISP Elastomers owns and operates a emulsion styrene/butadiene rubber manufacturing plant at 115 Main Street, Port Neches, Jefferson County, Texas. ISP Elastomers, Jefferson County, (TCEQ Account number JE-0017-A, Customer No. 602296287, Regulated Entity No. 10224799) entered into an Agreed Order (Docket No. 2004-0842-SIP) with the Texas Commission on Environmental

Quality. The Agreed Order has 14 stipulations and was adopted by the Commission on December 15, 2004. The Company was to shut down the North Plant portion of the plant, resulting in the elimination of fugitive ammonia emissions. All of the emissions reductions achieved by the shutdown of the North Plant are required by the Agreed Order. The TCEQ must permanently remove from the Emissions Inventory the North Plant and all of its associated emissions. We have included the supporting documentation for this Agreed Order with our TSD dated February 14, 2005.

VIII. What Do the Agreed Orders Between the TCEQ and Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, Require?

Mobil Chemical Company, a Division of ExxonMobil Oil Corporation owns and operates a chemical plant at 2775 Gulf Estates Road, Beaumont, Jefferson County, Texas. Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, (TCEQ Account number JE-0062S, Customer No. 601470214, Regulated Entity No. 102450756) entered into an Agreed Order (Docket No. 2004-0841-SIP) with the Texas Commission on Environmental Quality which will result in the reduction of the emissions of volatile organic compound emissions, oxides of nitrogen, hydrogen sulfide, and carbon monoxide. The Agreed Order has 16 stipulations and was adopted by the Commission on December 15, 2004. The Company will shut down an olefins and aromatics plant boiler, Emission Point No. EH34, by December 1, 2006. As part of the Aromatic Restructuring Project of the Mobil Chemical Company, the company will remove specific components from the Olefins and Aromatics UDEX Unit by December 31, 2005. The removal of the components represented in Air Quality Permit # 18838 will reduce fugitive emissions of volatile organic compounds from Emission Point Nos. EF3, EF4, EF9, EF10 and EF11. The Company reserved for future use 75 TPY of NO_x emissions reductions achieved by the shutdown of the boiler. All of the fugitive VOC emissions reductions achieved by the removal of specific components from the Olefins and Aromatics UDEX Unit are required by the Order. The TCEQ must permanently remove from the Emissions Inventory the boiler and all but 75 TPY of its NO_x emissions.

In a second Agreed Order, Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, (TCEQ Account number JE-

0064-O, Customer No. 601549660, Regulated Entity No. 101485738), entered into an Agreed Order (Docket No. 2004-1654-SIP) with the Texas Commission on Environmental Quality which will result in the reduction of the emissions of volatile organic compound emissions and hydrogen sulfide. The Agreed Order has 14 stipulations and was adopted by the Commission on December 15, 2004. On December 31, 2003, the Company shut down the Chemical Specialties Plant sulfurized isobutylene unit authorized by Air Quality Permit # 3186. All of the emissions reductions achieved by the shutdown of this unit are required by the Agreed Order. The TCEQ must permanently remove from the Emissions Inventory the unit and all of its associated emissions. We have included the supporting documentation for this Agreed Order with our TSD dated February 14, 2005.

IX. What Does the Agreed Order Between the TCEQ and Motiva Enterprises LLC, Jefferson County, Require?

Motiva Enterprises LLC owns and operates a refinery at 2100 Houston Avenue, Port Arthur, Jefferson County, Texas. Motiva Enterprises LLC, Jefferson County (TCEQ Account Number JE-0095D, Customer No. 600124051, Regulated Entity No. 1000209451) entered into an Agreed Order (Docket No. 2004-0843-SIP) with the Texas Commission on Environmental Quality to provide reductions in the emissions of volatile organic compounds, oxides of nitrogen, sulfur dioxide, particulate matter and carbon monoxide. The Agreed Order has 18 stipulations and was adopted by the Commission on December 15, 2004. On or before December 31, 2004, Motiva Enterprises LLC will shut down Boiler 26 (EPN SPS2-6) and Boiler 27 (EPN SPS2-7) authorized by Air Quality Permit No. 6056. Also by this date, the company will shut down Boiler 31 (EPN SPS3-1). The Company will uncouple Gas Turbine Generator 35 from Boiler 34 (EPN SPS3-4) and Boiler 35 (EPN SPS3-5) and reroute the exhaust gas to the Waste Heat Boiler (EPN WHB37SCR), which will have selective catalytic reduction maintained on the unit. In addition to the four flares required by the Consent Decree between the United States of America and the States of Delaware and Louisiana and Motiva Enterprises, Inc. to ensure compliance with New Source Performance Standards at refineries with hydrocarbon flares, which are not equipped with flare gas recovery, the company has agreed to meet these same

requirements for its remaining three flares at the plant (EPN FCCU NO3FS, EPN HCUNO1 FS, and EPN VPSNO4FS). All of the emissions reductions that will be achieved by the shutdown of the three boilers and the uncoupling/rerouting project are required by the Agreed Order. The TCEQ must remove permanently from the Emissions Inventory the three boilers and all of their associated emissions. We have included the supporting documentation for this Agreed Order with our TSD dated February 14, 2005.

X. What Does the Agreed Order Between the TCEQ and Premcor Refining Group, Jefferson County, Require?

Premcor Refining Group owns and operates a petroleum refinery at 1801 S. Gulfway Drive, Port Arthur, Jefferson County, Texas. Premcor Refining Group, Jefferson County (TCEQ Account Number JE-0042B, Customer No. 601420748, Regulated Entity No. 102584026) entered into an Agreed Order (Docket No. 2004-0844-SIP) with the Texas Commission on Environmental Quality to provide reductions in the emissions of oxides of nitrogen, hydrogen sulfide, sulfur dioxide and carbon monoxide and improve and update plant operations and maintenance. The Agreed Order has 20 stipulations and was adopted by the Commission on December 15, 2004. By December 31, 2004, the Company will replace all existing fuel gas burners, with a combined rated duty of approximately 600 million British Thermal Units per hour, in five process heaters in catalytic reforming unit # 1344, with Low-NO_x burners. The Company will also install a sulfur degassing system that is designed to remove hydrogen sulfide from sulfur prior to its loading into trucks from all of the in-ground tanks at Sulfur Recovery Units 543 and 544, which will be installed on or before December 31, 2004. The Premcor Refining Group will also install software to improve data management, reporting and compliance demonstration for 60 existing boilers and process heaters and the refinery process information system on or before June 30, 2004. On November 30, 2003 the company made modifications to the regenerative thermal oxidizer (RTO) for wastewater treatment unit # 8742 in order to reduce emission events relating to RTO shutdowns and by June 30, 2005, the company will upgrade the master electronic control system. Since the nature of these modifications are to prevent emission events associated with RTO shutdowns and not a reduction in

allowable emissions, there are no quantifiable emission reductions from the implementation of these measures. By April 30, 2005, a wet gas scrubber utilizing caustic and water solution sprays to reduce sulfur and particulate emissions will be installed at the outlet of the regenerator on the Fluid Catalytic Cracking unit # 1241. The Company also is shutting down a boiler with CO emissions, will operate the existing catalytic cracking unit in full burn mode to control the CO emissions, and will install a flue gas cooler. All of the emissions reductions that will be achieved by the replacement of the existing fuel gas burners with low-NO_x burners, the installation of the sulfur degassing system, the installation of the caustic and water solution sprays, the shutdown of the boiler, and the full burn mode operation are required by the Agreed Order. The TCEQ must remove permanently from the Emissions Inventory the fuel gas burners and all of their emissions and the boiler and all of its emissions. We have included the supporting documentation for this Agreed Order with our TSD dated February 14, 2005.

XI. Final Action

EPA is approving the above-described eight Agreed Orders into the Texas SIP and publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on June 13, 2005 without further notice unless we receive relevant adverse comment by May 12, 2005. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule, or affected portion of the rule, will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

XII. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 11, 2005.

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

§ 52.2270 Identification of plan.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Subpart SS—Texas

■ 2. The table in § 52.2270(d) entitled “EPA Approved Texas Source-Specific Requirements” is amended by adding to the end of the table eight new entries to read as follows:

* * * * *
(d) * * *

EPA.—APPROVED TEXAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order number	State effective date	EPA approval date	Comments
ExxonMobil Oil Corporation, Jefferson County, Texas.	Agreed Order No. 2004–0846–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
Huntsman Petrochemical Corporation, Port Neches Plant, Jefferson County, Texas.	Agreed Order No. 2004–0882–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
Huntsman Petrochemical Corporation, Port Arthur Plant, Jefferson County, Texas.	Agreed Order No. 2004–0845–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
ISP Elastomers, Jefferson County, Texas	Agreed Order No. 2004–0842–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, Texas.	Agreed Order No. 2004–0841–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
Motiva Enterprises LLC, Jefferson County, Texas.	Agreed Order No. 2004–0843–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
Premcor Refining Group, Inc., Jefferson County, Texas.	Agreed Order No. 2004–0844–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].
Mobil Chemical Company, Division of ExxonMobil Oil Corporation, Jefferson County, Texas.	Agreed Order No. 2004–1654–SIP.	12/15/2004	4/12/2005	[Insert FR page number where document begins].

* * * * *
[FR Doc. 05–7304 Filed 4–11–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–IN–0001; FRL–7894–8]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to volatile organic compound (VOC) requirements for Transwheel Corporation (Transwheel) of Huntington County, Indiana. Transwheel owns and operates an aluminum wheel reprocessing plant at which it performs cold cleaner degreasing operations. On December 22, 2004, the Indiana Department of Environmental Management (IDEM) submitted a Commissioner’s Order containing the revised requirements, and requested that EPA approve it as an amendment to the Indiana State Implementation Plan (SIP). The December 22, 2004,

submission supplements a November 8, 2001, submission. IDEM is seeking EPA approval of “an equivalent control device” for Transwheel’s degreasing operations, under 326 Indiana Administrative Code (IAC) 8–3–5(a)(5)(C).

DATES: This “direct final” rule is effective on June 13, 2005 unless EPA receives adverse written comments by May 12, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in E-Docket (RME) ID No. R05–OAR–2005–IN–0001 by one of the following methods:

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

Agency Website: <http://docket.epa.gov/rmepub/>. RME, EPA’s electronic public docket and comments system, is EPA’s preferred method for receiving comments. Once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: mooney.john@epa.gov.
Fax: (312)886–5824.

Mail: You may send written comments to:

John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IN–0001. EPA’s policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov,

or e-mail. The EPA RME website and the federal regulations.gov website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886-6524, E-Mail: rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. General Information

A. Does This Action Apply to Me?

This action applies to a single source, Transwheel Corporation, whose facility is located in Huntington County, Indiana.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R05-OAR-2005-IN-0001, and a hard copy file which is available for inspection at the Regional Office. The official public file 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 rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the [regulations.gov](http://www.regulations.gov) web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket R05-OAR-2005-IN-0001" 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.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

II. What Is EPA Approving?

EPA is approving a revision to Indiana's VOC SIP for Transwheel. The company has requested that it be permitted to use an oil cover as an equivalent control device for its cold cleaner degreaser, under 326 IAC 8-3-5(a)(5)(C). The oil cover is a layer of mineral oil several inches thick floating over the cleaning solvent in a dip tank. The solvent is a mixture of two water miscible compounds, N-methyl-2-pyrrolidinone (NMP) and ethanol amine (MEA). The oil cover controls VOC emissions from the dip tank by reducing solvent evaporation.

III. What Are the Changes From the Current Rule?

Indiana's cold cleaner degreaser control requirements are contained in 326 IAC 8-3-5. Under Section (a)(5) of this rule, degreasers that use volatile or heated solvent are required to control VOC emissions by using a water cover over the solvent, using a freeboard ratio over 0.75, or by using "other systems of demonstrated equivalent control..." Such equivalent systems, however, must

be submitted to and approved by EPA as SIP revisions.

IV. What Is EPA's Analysis of the Supporting Materials?

Indiana supplied EPA with technical information on the solvents used by Transwheel and the requested oil cover. Indiana also provided information on why a water cover would not work with the solvents used and why the freeboard ratio of the tank cannot practically be increased to the level required by 326 IAC 8-3-5.

The solvents Transwheel uses, NMP and MEA, are miscible in water. An attempt to use a water cover would fail to reduce VOC emissions. The water would blend with the cleaning solvents and not provide any barrier against solvent evaporation. To meet the freeboard ratio requirement of 0.75, Transwheel would need to raise the freeboard height on its dip tank to 34 inches. This would require that the building be altered to accommodate the dip tank's increased height. The cost of raising the roof or lowering the floor makes this option cost prohibitive.

In its "Guide to Cleaner Technologies: Cleaning and Degreasing Process Changes" (EPA/625/R-93/017), EPA suggests the use of an oil cover for operations using heated NMP. Transwheel uses a heated NMP and MEA solvent blend in its operation. The supplied technical information shows that NMP and MEA have similar vapor densities. The oil cover, a layer of mineral oil several inches deep, provides a physical barrier between the cleaning solvents and the atmosphere. Thus, it is reasonable to expect an oil cover to work well for controlling VOC emissions from an NMP and MEA solvent blend.

It should also be noted that this request constitutes a petition for a site-specific reasonably available control technology (RACT) plan under 326 IAC 8-1-5. Consequently, Transwheel was required to demonstrate to IDEM that the oil cover constitutes RACT for the subject facility, as well as address the other factors specified in 326 IAC 8-1-5(a).

V. What Are the Environmental Effects of These Actions?

The primary reason for control technologies in this type of facility is to reduce precursors of tropospheric (ground level) ozone. Reactions involving VOCs and nitrogen oxides in warm air form tropospheric ozone. The highest concentrations of ozone occur in the warm months of the year. Ozone decreases lung function causing chest pain and coughing. It can aggravate

asthma and other respiratory diseases. Children playing outside and healthy adults who work or exercise outside also may be harmed by elevated ozone levels. Ozone also reduces vegetation growth and reproduction including economically important agricultural crops.

The oil cover is expected to provide equivalent VOC emission reductions to what would have been achieved by raising the freeboard height to the required freeboard ratio. Controlling VOC emissions from the Transwheel facility should help to reduce tropospheric ozone formation in northeastern Indiana.

VI. What Rulemaking Action Is EPA Taking?

EPA is approving, through direct final rulemaking, revisions to VOC emissions regulations for the Transwheel aluminum wheel reprocessing facility in Huntington County, Indiana. The revision provides for the use of an oil cover as an equivalent VOC emission control system under 326 IAC 8-3-5 for its cold cleaner degreaser.

We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse written comments are filed. This rule will be effective June 13, 2005 without further notice unless we receive relevant adverse written comment by May 12, 2005. If we receive such comments, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

For this reason, this action is also not subject to Executive Order 13211,

"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 1, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(169) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(169) On December 22, 2004, Indiana submitted a request to revise the volatile organic compound requirements for Transwheel Corporation of Huntington County, Indiana. EPA is approving the oil cover as an equivalent control device under 326 Indiana Administrative Code 8-3-5 (a)(5)(C).

(i) Incorporation by reference.

(A) Commissioner's Order #2004-04 as issued by the Indiana Department of Environmental Management on December 22, 2004.

[FR Doc. 05-7329 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003-D103]

Defense Federal Acquisition Regulation Supplement; Personal Services Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004. Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical

treatment facilities. Section 841 adds authority for DoD to enter into contracts for personal services that are to be performed outside the United States or that directly support the mission of a DoD intelligence or counter-intelligence organization or the special operations command.

DATES: *Effective Date:* April 12, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D103.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 69 FR 55991 on September 17, 2004, to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 721 amended 10 U.S.C. 1091(a)(2) to provide permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 amended 10 U.S.C. 129b to add authority for DoD to enter into contracts for personal services that support DoD activities and programs outside the United States or that support the mission of a DoD intelligence or counter-intelligence organization or the special operations command.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to personal services contracts for (1) health care at locations outside of DoD medical treatment facilities, or (2) urgent or unique services that are to be performed outside the United States, or that are in direct support of intelligence missions, when it would not be practical for DoD to obtain these services by other means.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not

contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 237, which was published at 69 FR 55991 on September 17, 2004, is adopted as a final rule without change.

[FR Doc. 05-7089 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 040920271-5083-02, I.D. 102004A]

RIN 0648-AS05

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (IDCP). The final rule prohibits activities that undermine the effective implementation and enforcement of the Marine Mammal Protection Act (MMPA), Dolphin Protection Consumer Information Act (DPCIA), and International Dolphin Conservation Program Act (IDCPA).

DATES: Effective May 12, 2005.

ADDRESSES: Written comments on the collection-of-information requirements should be sent to Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Comments may also be sent via facsimile (fax) to (562) 980-4027 or via E-mail. The mailbox address for providing E-mail comments is

0648_AS05@noaa.gov. Include in the subject line of the E-mail the following document identifier: RIN 0648-AS05. The Environmental Assessment (EA) prepared for this rule is available on the Internet at the following address: <http://swr.nmfs.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT:

Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, (562) 980-4020.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of the IATTC, which was established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the fisheries and the status of tuna stocks to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. More recently, the IATTC has moved into other fishery management issues, such as managing the cumulative capacity of vessels fishing in the Convention Area, addressing bycatch of non-target and protected species, and imposing time-area closures to conserve tuna stocks.

In support of fleet capacity control, the United States agreed to an IATTC resolution that limited total ETP purse seine fleet capacity. Currently, the United States is committed to limiting the active aggregate capacity of its domestic tuna purse seine fleet in the ETP to 8,969 metric tons (mt) carrying capacity. The U.S. limit was originally based on the cumulative capacity of U.S. vessels actively fishing in the ETP in the years leading up to 1999. In addition, U.S. purse seine vessels based in the western Pacific Ocean (WPO) were allowed to make 32 trips into the ETP without counting against the 8,969 mt limit. Recent resolutions adopted by the IATTC member nations have addressed limits on fleet capacity. The United States and other IATTC member nations and Parties to the Agreement on the IDCP (Agreement) are responsible for domestic implementation of resolutions adopted each year. Under the U.S. Tuna Conventions Act (16

U.S.C. 951 *et seq.*), the Secretary of Commerce is authorized to promulgate regulations implementing the recommendations of the IATTC. This final rule implements the recent capacity resolutions adopted by the IATTC member nations.

The IDCPA was signed into law August 15, 1997, and became effective March 3, 1999. The IDCPA amends the MMPA, DPCIA (16 U.S.C. 1385), and Tuna Conventions Act. The IDCPA, together with previous declarations, became the blueprint for the Agreement on the IDCP. In May 1998, eight nations, including the United States, signed a binding, international agreement to implement the IDCP. The Agreement became effective on February 15, 1999, after four nations (United States, Panama, Ecuador, and Mexico) deposited their instruments of ratification, acceptance, or adherence with the depository for the Agreement. The IDCPA (16 U.S.C. 1413) mandates the Secretary of Commerce to issue and revise regulations, as appropriate, to implement the IDCP.

On October 29, 2004, NMFS published a proposed rule in the **Federal Register** (69 FR 63122), which would have: (1) established a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002 (Vessel Register), and authorized only those vessels to purse seine for tuna in the ETP; (2) limited the aggregate active capacity of U.S. purse seine vessels in the ETP to 8,969 mt per year; (3) revised the requirements for maintaining and submitting tuna tracking and verification records; (4) ensured owners of U.S. vessels on the Vessel Register pay annual assessments; (5) prohibited commerce in tuna or tuna products bearing a label or mark referring to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (6) prohibited interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA, and DPCIA.

This final rule is largely unchanged from the proposed rule. In this final rule, NMFS responds to public and government comments, and makes technical modifications.

Responses to Comments

NMFS solicited comments on the proposed rule. NMFS received seven comments letters during the 30-day comment period from U.S. Customs and Border Protection and the general public. Key issues and concerns are

summarized below and responded to as follows:

Importation, Purchase, Shipment, Sale, and Transport

Comment 1: The new paragraph proposed in 50 CFR 216.24(f)(3)(ii) will help NMFS monitor tuna shipments and may act as a deterrent to importers who may consider undermining current law.

Response: NMFS proposed this new paragraph to achieve the purposes described in the comment.

Comment 2: The proposed changes to require the name of the vessel on the Fisheries Certificate of Origin (FCO) regardless of the gear type used and to require importers, exporters, or processors who take custody of tuna shipments to sign and date FCOs in § 216.24(f)(4)(xi) and (f)(4)(xiv), respectively, should assist enforcement efforts.

Response: NMFS proposed these changes to achieve the purposes described in the comment.

Comment 3: The proposed rule will allow NMFS to enforce the dolphin-safe labeling standard at the wholesale, distribution and retail levels and not just against the party responsible for placing a dolphin related label on the product. This authority should increase pressure on businesses that distribute or sell labeled products to ensure that the product complies with the dolphin-safe labeling standard.

Response: The regulations at § 216.93(f) extend the recordkeeping and document submission requirements to wholesalers/distributors, but not to retailers. NMFS determined that extending these requirements to wholesalers/distributors is necessary to enforce the dolphin-safe labeling standard. However, extending this requirement to the retailers is overly burdensome due to the number of entities that would be affected by these recordkeeping and submission requirements. NMFS agrees with the commenter that the regulations should improve compliance with the dolphin-safe labeling standard through increased enforcement pressure at the wholesaler/distributor level of commerce.

Comment 4: Current regulations requiring importers to submit paper copies of import documents, specifically NOAA Form 370, to U.S. Customs and Border Protection (USCBP), Department of Homeland Security, are burdensome to that agency because the documentation then had to be transferred to NMFS. The proposed change to § 216.24(f)(3)(ii) requiring that documentation be submitted directly to NMFS, will reduce this burden and

allow for USCBP resources to be directed to other objectives.

Response: NMFS proposed this change to achieve the purposes described in the comment.

Verification Requirements

Comment 5: The proposed prohibition against distribution of Tuna Tracking Forms (TTFs) to private organizations in § 216.93(c)(5)(v) is not consistent with calls for transparency in the International Dolphin Conservation Program Act (IDCPA). This proposed prohibition undercuts the tracking and enforcement efforts NMFS is attempting to strengthen through this proposed rule. As an alternative, NMFS could eliminate the name of the vessel owner or captain on TTFs to protect the privacy of these individuals while providing the public with basic but important information.

Response: The Parties to the Agreement established, and are bound by, Rules of Confidentiality and a System for Tracking and Verifying Tuna. Section 3, paragraph 7 of the Agreement's System for Tracking and Verifying Tuna (available at <http://www.iattc.org/IDCPDocumentsENG.htm>) states: "TTFs shall be treated by the competent national authority as confidential official documents of the IDCP, consistent with Article XVIII of the [Agreement], and the [Agreement's] Rules of Confidentiality." Under paragraph (1)(b) of the Agreement's Rules of Confidentiality (available at <http://www.iattc.org/IDCPDocumentsENG.htm>), "information relating to unloadings or trade which is associated with individual vessels and/or companies, including Tuna Tracking Forms (TTFs) for those vessels" is treated as confidential.

Because TTFs are documents of the Secretariat to the Agreement and not NMFS, NMFS cannot distribute these documents even if certain sensitive information is eliminated. Further, TTFs are confidential documents with no provision for part, let alone all, of these documents to be released. Section 216.93(c)(5)(v) of the regulations, which is now finalized, is consistent with policies adopted by the Parties to the Agreement and remains unchanged in these final regulations.

Comment 6: The proposed changes to § 216.93(e) requiring the submittal and maintenance of records on all tuna imports (not just those from the ETP) should enhance NMFS' ability to track and verify shipments of tuna products.

Response: NMFS proposed these changes to achieve the purposes described in the comment.

Comment 7: The proposed changes to § 216.93(f) to include wholesalers and distributors of tuna products in the list of entities that must maintain records should complement enforcement efforts and in particular allow for more frequent audits and spot checks.

Response: NMFS proposed these changes to achieve the purposes described in the comment.

Changes From the Proposed Rule

Changes to Vessel Permit Application Fees

NMFS clarified in § 216.24(b)(6)(i) of this final rule that: (1) the amount of the vessel permit application fee may change and (2) the amount of the fee is determined by the Assistant Administrator, NMFS, in accordance with the NOAA Finance Handbook and printed on the vessel permit application form provided by the Administrator, Southwest Region. This was always NMFS' intent in § 216.24(b)(6)(i), but the intent may have not been clear in the way the proposed regulations were drafted.

Changes to Observer Placement Fee

NMFS clarified in § 216.24(b)(6)(iii) of this final rule that the observer placement fee supports both the placement of observers on individual vessels and the maintenance of the IATTC observer program or other approved observer program.

Changes to Disposition of Fisheries Certificates of Origin

NMFS added a mailing address for the Tuna Tracking and Verification Program, Southwest Region, in § 216.24(f)(3).

Changes to Vessel Register

NMFS clarified in § 300.22(b)(1)(ii) that purse seine vessels of 400 short tons (st) (362.8 mt) or less carrying capacity for which landings of tuna caught in the ETP comprise 50 percent or less of the vessel's total landings for a given calendar year are exempted from being listed on the Vessel Register. In the proposed rule, only purse seine vessels less than 400 st were included in this exception. This clarification is consistent with the description of vessels required to be listed on the Vessel Register provided in the preamble of the proposed rule.

NMFS clarified in § 300.22(b)(4) that each of the payments and permit applications listed in § 216.24(b) must be submitted in order for a vessel to be listed on the Vessel Register in the following calendar year. If the required payments and permit applications are not submitted to the Regional

Administrator, the vessel will not be listed on the Vessel Register in the following year. This was NMFS' original intention, but this was not clear in the proposed rule.

NMFS clarified in § 300.22(b)(4)(iii) that a vessel owner or managing owner may, at any time during the year, request that a vessel qualified to be listed on the Vessel Register be categorized as inactive for the remainder of the calendar year by submitting to the Administrator, Southwest Region, payment of the associated observer placement fee plus a 10 percent surcharge of the fee. In § 300.22(b)(6)(i), it was already clear that a vessel qualified to be listed on the Vessel Register may be added back to the Vessel Register as inactive at any time during the year.

In § 300.22(b)(5), NMFS removed paragraphs (iii) and (iv) because vessel owners are required to take specific actions (i.e., pay fees and submit permit applications) for vessels to be listed on the Vessel Register each year. The proposed rule incorrectly indicated that the default condition was for vessels to remain on the Vessel Register from year to year unless an owner did not meet these requirements in which case the vessel would be removed from the Vessel Register. In this final rule, NMFS also divided § 300.22(b)(5)(vi) of the proposed rule into two paragraphs. They appear in § 300.22(b)(5)(iii) and (iv) of this final rule.

NMFS changed § 300.22(b)(5)(v) to allow the Regional Administrator to remove a vessel from the Vessel Register if notified by either the United States Maritime Administration (MARAD) or the United States Coast Guard (USCG) that either the owner has submitted an application for transfer of the vessel to foreign registry and flag or that the documentation of the vessel will be or has been deleted for any reason. The failure to include MARAD in this provision in the proposed regulations was an oversight. NMFS made the change in the final rule because deletion of a vessel from U.S. documentation by the USCG can be immediate after MARAD provides its approval of the action.

NMFS' policy and intention is to remove each vessel from the Vessel Register upon notification by MARAD or USCG that either agency has determined that all requirements for flag transfer have been met and the only step remaining is for USCG to complete final paperwork to delete U.S. documentation for that vessel. NMFS maintains this policy in order to prevent U.S. capacity from transferring with the vessel on the Vessel Register and increasing the

capacity of the tuna purse seine fleet fishing in the ETP.

In this final rule, NMFS added a new § 300.22(b)(6) to clarify the process for removing vessels from the Vessel Register. According to the process, the Regional Administrator will promptly notify the vessel owner in writing of the removal of the vessel and the reasons for its removal. For vessel removals under § 300.22(b)(5)(iii), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For vessel removals under § 300.22(b)(5)(iv), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or other duration agreed upon between NOAA and the vessel owner. Section 300.22(b)(6) of the proposed rule is renumbered as § 300.22(b)(7) in this final rule.

NMFS clarified in § 300.22(b)(7)(v) (formerly 300.22(b)(6)(v)) that an owner or managing owner may request that a vessel replace a vessel of equal or greater carrying capacity previously removed from active status on the Vessel Register by submitting the observer placement fee, vessel permit application, and permit application processing fee in accordance with § 216.24(b). In addition, in order for the replacement vessel to be listed as active on the Vessel Register, the captain of the vessel must possess an operator permit issued under § 216.24(b).

Classification

Executive Order 12866

This final rule has been determined to be not "significant" under Executive Order 12866. NMFS prepared a Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) for this action, included as Appendix A to the Environmental Assessment (EA) prepared on the proposed regulations. The EA, including the FRFA, is available on the Internet at the following address: <http://swr.nmfs.noaa.gov/>.

Regulatory Flexibility Act

Pursuant to procedures established to implement the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared a RIR/FRFA for this action, included as Appendix A to the EA. The purposes of this action were described earlier in the preamble to the proposed rule, published on October 29, 2004 (69 FR 63122).

NMFS prepared an RIR/Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, which was

described in the classification section of the preamble to the proposed rule. The public comment period ended on November 29, 2004. Comments received and NMFS responses thereto are contained in the preamble. No comments were received on the economic impacts of the rule.

NMFS considered but rejected two alternatives to the preferred alternative which, (1) establishes a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002, and requires only those vessels be authorized to purse seine for tuna in the ETP; (2) enables the National Marine Fisheries Service (NMFS) to maintain the Vessel Register annually, including to establish procedures for removing vessels for serious violations and to prevent U.S. capacity from increasing the regional capacity of the tuna purse seine fleet in the ETP; (3) limits the aggregate active capacity of U.S. purse seine vessels in the ETP to 8,969 mt per year; (4) revises the requirements for maintaining and submitting tuna tracking and verification records; (5) ensures owners of U.S. vessels on the Vessel Register pay annual assessments; (6) prohibits commerce in tuna or tuna products bearing a label or mark referring to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (7) prohibits interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA and DPCIA.

The first alternative NMFS analyzed and rejected was the "no action" alternative. This alternative would not have implemented recommendations of the IATTC member nations or resolutions adopted by the Parties to the Agreement on the IDCP. The second alternative NMFS considered and rejected was the "variations of the preferred alternative" alternative. This alternative would retain the clearly required elements of the preferred alternative, but it would also include other measures not specifically required by internationally adopted resolutions. Generally, the objectives of resolutions adopted by the IATTC member nations and the Parties to the Agreement on the IDCP are clear; however, some provisions allow for agency discretion, either in implementing or interpreting the intent of the resolution. These discretionary areas provided the basis for this third alternative. For example, under this alternative NMFS considered discretionary areas with respect to management of fleet capacity, such as:

(1) limiting the annual aggregate active capacity of the U.S. purse seine vessels participating in the ETP tuna fishery to an amount less than 8,969 mt, (2) allowing all vessels owners to have an equal opportunity to be categorized as active on the Vessel Register from year to year regardless of the vessel's status in the prior year (i.e., there would be no incentive for a vessel being active in a prior year); and (3) not deterring against frivolous requests for vessels to be categorized as active on the Vessel Register.

NMFS rejected the "no action" alternative because it would not restrict annual participation by U.S. flag purse seine vessels in the fishery and would not implement needed prohibitions or refine tuna tracking procedures. Under the "no action" alternative, the United States would not be fulfilling its obligations under the IATTC and Agreement. Adopting this alternative would provide a precedent for other nations to ignore future international recommendations. NMFS rejected the second alternative which would entail taking independent action to address tuna conservation (e.g., quota, area closures, or other variations of the preferred alternative) because these approaches fail to address the potential for fleet capacity growth. Further, the United States does not have independent sources of information that would provide a sufficiently sound approach to support a departure from recommendations of the IATTC member nations and the Parties to the Agreement.

NMFS selected the preferred alternative, which imposes some new burdens on small entities. Specifically, the preferred alternative regulates several (i.e., one or two) small purse seine vessels (i.e., vessels of 400 st carrying capacity or less and classified as small business entities). Under the rule, several small vessels that have historically targeted tuna on a full-time basis, as well as large tuna purse seine vessels (in excess of 400 st carrying capacity), would be required to be listed as active on the Vessel Register and pay associated annual vessel assessments in order to fish for tuna in future years.

Updates to the tuna tracking and verification program; prohibitions against commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and prohibitions against activities that undermine the implementation and enforcement of the MMPA, IDCPA and DPCIA will not significantly impact

small business entities. However, the rule will impose some new or increased burdens to small businesses that will ensure NMFS' continued ability to verify the dolphin-safe status of tuna. These burdens are largely related to new tuna tracking and verification procedures and will affect importers, exporters, wholesalers/distributors and transshippers.

NMFS selected the preferred alternative because it achieves NMFS' primary objectives to establish domestic measures consistent with international resolutions adopted by the IATTC and the Parties to the Agreement, as well as other procedural modifications that NMFS determined to be necessary after several years experience managing the U.S. tuna purse seine fleet in the ETP and implementing a domestic tuna tracking and verification program. Specifically, the preferred alternative both minimizes the potential for significant economic impacts to a variety of entities and implements measures to (1) establish a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002, and require only those vessels be authorized to purse seine for tuna in the ETP; (2) enable NMFS to maintain the Vessel Register annually, including to establish procedures for removing vessels for serious violations and to prevent U.S. capacity from increasing the regional capacity of the tuna purse seine fleet in the ETP; (3) limit the aggregate active capacity of U.S. purse seine vessels in the ETP to 8,969 mt per year; (4) revise the requirements for maintaining and submitting tuna tracking and verification records; (5) ensure owners of U.S. vessels on the Vessel Register pay annual assessments; (6) prohibit commerce in tuna or tuna products bearing a label or mark referring to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (7) prohibit interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA and DPCIA.

As discussed in previous paragraphs, the "no action" and "independent action" alternatives were rejected because they would impose greater burdens than the preferred alternative and/or would not implement the seven measures stated above. Four specific examples of the burdens NMFS considered in selecting the preferred alternative follow. First, in selecting the preferred alternative NMFS provides reasons for removing vessels from the

Vessel Register (e.g., the owner of the vessel is applying to transfer the vessel to a foreign flag, the vessel has sunk, etc.) in order to free up opportunities for other vessels to participate in the fishery. Second, the preferred alternative contains a deterrent for a vessel owner who requests to have a vessel listed as active on the Vessel Register but does not utilize that active status. Vessels for which these frivolous requests for active status were made would receive the lowest priority consideration for active status the following year, allowing other vessel owners to attain higher priority. Third, NMFS considered but rejected taking independent action to increase the length of time that records must be maintained by exporters, transshippers, importers, processors and wholesalers/distributors from 2 years to 3 years because this action would be overly burdensome to these entities. Fourth, NMFS considered but rejected taking independent action to decrease the length of time within which these entities are required to submit tracking and verification documentation to the Regional Administrator to less than 30 days. This action was rejected because NMFS found it would create an additional burden to these entities without substantially strengthening NMFS' ability to track and verify the dolphin-safe status of tuna.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that were discussed in the proposed rule. In Section 216.93(f) of this final rule, wholesalers/distributors are included in the list of entities required to produce records relative to tracking and verification of tuna to the Administrator, Southwest Region. This collection-of-information requirement was approved by the Office of Management and Budget (OMB) on February 6, 2003, under control number 0648-0387. The public reporting burden for this collection is estimated to average 30 minutes for a wholesaler/distributor to produce records.

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The preceding public reporting burden estimates for collections of information include time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send written comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden to NMFS (see ADDRESSES) and David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov or by fax to 202-395-7285.

Endangered Species Act

NMFS prepared a Biological Opinion for the interim final rule to implement the IDCPA in December 1999, concluding that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. NMFS is unaware of any new information that would indicate this action may affect listed species in a manner or to an extent not previously considered, nor do the final regulations modify the fishery in a manner that causes an effect to listed species not previously considered in the Biological Opinion. Therefore, NMFS has determined that the conclusions and incidental take statement of the Biological Opinion remain valid and reinstitution of consultation is not required. NMFS continues to monitor annual sea turtle takes and mortalities in the U.S. tuna purse seine fishery operating in the ETP to ensure that levels are within those analyzed in the Biological Opinion and authorized in the amended Incidental Take Statement.

National Environmental Policy Act

NMFS prepared a draft Environmental Assessment (EA) for the proposed rule. NMFS did not receive any comments on the draft EA. As a result, NMFS prepared an EA for these final regulations and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this final rule. A copy of the EA is available from NMFS (see ADDRESSES) or at: http://swr.nmfs.noaa.gov.

List of Subjects

50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 300

International fisheries regulations; Pacific tuna fisheries.

Dated: April 5, 2005.

Rebecca Lent, Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

2. In § 216.3 the definition for "Fisheries Certificate of Origin" is revised and a definition for "South Pacific Tuna Treaty" is added to read as follows:

§ 216.3 Definitions.

Fisheries Certificate of Origin, or FCO, means NOAA Form 370, as described in § 216.24(f)(4).

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

3. A new § 216.17 is added to subpart B to read as follows:

§ 216.17 General prohibitions.

It is unlawful for any person to: (a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

4. In § 216.24 paragraphs (b)(4) introductory text, (b)(6)(i), (b)(6)(iii), the

introductory text to (f)(3), (f)(3)(ii) and (iii), (f)(4)(xi), (f)(4)(xiv) and (f)(12) are revised and a new (f)(3)(iv) is added to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(b) * * * (4) Application for vessel permit. The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 15 days for processing. All vessel permit applications must be faxed to (562) 980-4027. An owner or managing owner requesting to have a vessel in excess of 400 st (362.8 mt) carrying capacity for which a DML was requested categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title must submit to the Administrator, Southwest Region, the vessel permit application, payment of the observer placement fee under paragraph (b)(6)(iii) of this section and payment of the vessel permit application processing fee no later than September 15 of the year prior to the year for which the DML was requested. The owner or managing owner of a vessel in excess of 400 st (362.8 mt) carrying capacity not requesting a DML must submit the vessel permit application, payment of the observer placement fee, and payment of the vessel permit application processing fee no later than November 30 of the year prior to the year for which the vessel permit was requested. An application must contain:

* * * * *

(6) * * * (i) Vessel permit application fees. Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook. The amount of the fee will be printed on the vessel permit application form provided by the Administrator, Southwest Region.

* * * * *

(iii) Observer placement fee. The observer placement fee supports the placement of observers on individual vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a vessel for which a DML has been requested must submit the observer placement fee, as established by the IATTC or other approved observer

program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML was requested. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a vessel for which a DML has not been requested, but that is listed on the Vessel Register, as defined in § 300.21 of this title, must submit payment of the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the observer placement fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status less the observer placement fee associated with inactive status that was already paid before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status before

NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments received after the dates specified in paragraphs (b) (6) (iii)(A) or (B) of this section will be subject to a 10 percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

* * * * *

(f) * * *

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>. * * *

(ii) FCOs and associated certifications, if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address:

SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be

endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) * * *

(xi) The name of the harvesting vessel;

* * * * *

(xiv) Each additional importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

* * * * *

(12) *Market Prohibitions.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(A) Dolphin-safe under subpart H of this part; or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

* * * * *

■ 5. In § 216.93, paragraphs (c)(5)(v), (e) and (f) are revised to read as follows:

§ 216.93 Tracking and verification program.

* * * * *

(c) * * *

(5) * * *

(v) TTFs are confidential documents of the IDCP. Vessel captains and managing offices may not provide copies of TTFs to any representatives of private organizations or non-member states.

* * * * *

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be

accompanied by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) *Verification requirements*—(1) *Record maintenance.* Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) *Audits and spot checks.* Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*, unless otherwise noted.

■ 2. In § 300.21 definitions for “South Pacific Tuna Treaty” and “Vessel Register” are added to read as follows:

§ 300.21 Definitions.

* * * * *

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

* * * * *

Vessel Register means the regional register of vessels authorized to purse seine for tuna in the Convention Area, as established by the Inter-American

Tropical Tuna Commission on June 28, 2002.

■ 3. In § 300.22 the section heading and paragraph (b) is revised to read as follows:

§ 300.22 Yellowfin tuna—recordkeeping and written reports.

* * * * *

(b) *Vessel register.* Except as provided under paragraph (b)(1) of this section, vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to purse seine for tuna in the Convention Area.

(1) *Exceptions.* The following classes of vessels are exempted from being listed on the Vessel Register to purse seine for tuna in the Convention Area:

(i) Vessels licensed under the South Pacific Tuna Treaty that exercise an option to fish in the Convention Area for a single trip each year, provided that the total number of optional trips does not exceed 32 in a given calendar year. Each optional trip in the Convention Area may not exceed 90 days in duration.

(ii) Vessels of 400 st (362.8 mt) or less carrying capacity for which landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings, by weight, for a given calendar year.

(2) *Requirements for inclusion on the vessel register.* The Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to the creation of the Vessel Register on June 28, 2002. New vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the vessel or vessels being replaced.

(3) *Vessel information.* The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale or a person authorized in writing to serve as agent for the owner must provide such information about the vessel and its characteristics as requested by the Regional Administrator, to conform to IATTC actions relative to the Vessel Register. This information initially includes, but is not limited to, vessel name and registration number; a photograph of the vessel with the registration number showing and legible; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place

where built; and type of fishing method or methods used.

(4) *Vessel register status.* For a vessel to be categorized as either “active” or “inactive” on the Vessel Register in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator under § 216.24(b) of this title, the observer placement fee, vessel permit application, and permit application processing fee for the vessel.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may submit to the Regional Administrator, a vessel permit application and payment of the permit application fee and observer placement fee for each vessel in excess of 400 st (362.8 mt) carrying capacity qualified to be listed on the Vessel Register under paragraph (b)(2) of this section to have a vessel categorized as active for the following calendar year. Vessel permit applications may not be submitted via regular mail; they must be faxed to (562) 980–4027. Owners or managing owners of vessels of 400 st (362.8 mt) carrying capacity or less must only submit payment of the observer placement fee associated with active status in order to request a small purse seine vessel be categorized as active for the following calendar year. The Regional Administrator must receive the faxed vessel permit application and payment of the observer placement fee and permit application processing fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application and payment of the observer placement fee and permit application processing fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) For 2005 only, requests for vessels will be prioritized on a first-come, first-served basis according to the date and time the fax is received in the office of the Regional Administrator;

(D) Requests for active status for 2006 and subsequent years will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, beginning with the vessel's status in 2005, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, beginning with the vessel's status in 2005;

(3) Requests for vessels not described in paragraphs (b)(4)(D)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated observer placement fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined, by the Regional Administrator, to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.* Beginning with requests made for 2005, a request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator if, for a vessel categorized as active in a given calendar year, less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year by submitting to the Regional Administrator payment of the associated observer placement fees. At any time during the year, a vessel owner or managing owner may request that a vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year by submitting to the Regional

Administrator payment of the associated observer placement fee plus a 10 percent surcharge of the fee. Payment of the observer placement fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(5) *Removal from the vessel register.* A vessel may be removed from the Vessel Register by the Regional Administrator:

- (i) If the vessel has sunk;
- (ii) Upon written request by the vessel's owner or managing owner;
- (iii) Following a final agency action on a permit sanction for a violation;
- (iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation; or

(v) If the U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

- (A) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or
- (B) The documentation for the vessel will be or has been deleted for any reason.

(6) *Process for Removal from the Vessel Register.* When a vessel is removed from the Vessel Register under paragraph (b)(5) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal and the reasons therefor. For a removal from the Vessel Register under § 300.22(b)(5)(iii), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register under § 300.22(b)(5)(iv), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

(7) *Procedures for replacing vessels removed from the Vessel Register.* (i) A vessel previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner of the vessel pays the observer placement fee associated

with inactive status plus a 10 percent surcharge of the fee.

(ii) A vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (v) of this section.

(iii) After a vessel categorized as active is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting payment of the observer placement fee to the Regional Administrator.

(v) The owner or managing owner of a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting to the Regional Administrator under § 216.24(b) of this title, the observer placement fee, vessel permit application, and permit application processing fee for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

[FR Doc. 05-7312 Filed 4-11-05; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 69

Tuesday, April 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 Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO-14-A73, et al.; DA-03-10]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001 ...	Northeast	AO-14-A73
1005 ...	Appalachian	AO-388-A14
1006 ...	Florida	AO-356-A37
1007 ...	Southeast	AO-366-A43
1030 ...	Upper Midwest	AO-361-A38
1032 ...	Central	AO-313-A47
1033 ...	Mideast	AO-166-A71
1124 ...	Pacific Northwest ...	AO-368-A34
1126 ...	Southwest	AO-231-A67
1131 ...	Arizona Las-Vegas	AO-271-A39

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A national public hearing is being held to consider proposals seeking to amend the Class I fluid milk product definition of all Federal milk marketing orders.

DATES: The hearing will convene at 8 a.m. on Monday, June 20, 2005.

ADDRESSES: The hearing will be held at Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, PA 15219-1122. Telephone Number: (412) 261-2000.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: gino.tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact David Z. Walker, Market Administrator, at (330) 225-4758; email address: dwalker@fmnaclev.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, Pennsylvania beginning at 8 a.m., on Monday, June 20, 2005, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) 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. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

PARTS 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, AND 1131—[AMENDED]

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

Authority: 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by Dairy Farmers of America, Inc.

Proposal No. 1

This proposal seeks to amend the fluid milk product definition to include products formulated using milk or milk solids for beverage consumption by removing the 6.5 percent nonfat milk solids standard.

1. Amend § 1000.15 by revising paragraphs (a) and (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, fluid milk product means any product containing milk or milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages, including any beverage products that are flavored, cultured, modified with added nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and whey; and

* * * * *

Proposal No. 2

This proposal seeks to amend the fluid milk product definition to include any dairy ingredient, including whey, when calculating the milk contained in a product on a protein-equivalent or nonfat solids equivalent basis.

Proposed by O-AT-KA Milk Products Cooperative, Inc.

Proposal No. 3

This proposal seeks to amend the fluid milk product definition by adding a true-protein standard. In determining the protein content and milk equivalent of a product, the proposal seeks to include all dairy solids—such as caseinates, milk protein concentrates and whey protein—and non-dairy sources while pricing only the milk equivalent of the dairy solids. Furthermore, this proposal seeks to add exemptions for alcoholic beverages containing dairy ingredients and formulas prepared for dietary use (meal replacements or nutritional supplements) having a true-protein content from any source greater than 6.2 percent on a protein-equivalent basis.

1. Amend § 1000.15 by revising paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(4), and adding new paragraphs (b)(2) and (b)(3) to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk and sweetened condensed milk/skim milk,

(2) The following products packaged in containers that are shelf stable at ambient temperatures:

(i) Formulas especially prepared for infant feeding;

(ii) Formulas especially prepared for meal replacement and contain at least 25 percent of the Daily Values per serving reference amounts defined by the Food and Drug Administration in 21 CFR 101.9 for calories and protein and at least 16 of the 25 listed vitamins and minerals.

(iii) Formulas especially prepared for high protein drinks and have a true protein solids content greater than 8 percent.

(iv) Beverages that contain alcohol and are licensed by the Federal Tax and Trade Bureau, U.S. Department of the Treasury, and

(v) Packaged milk products that are specifically formulated and labeled for animal use.

(3) Any product that contains by weight less than 6.5 percent nonfat milk solids and 2.24 percent true protein. Provided further that all protein sources (including non-dairy sources) will be included in establishing the true protein content of the beverage product.

* * * * *

Proposed by Select Milk Producers Inc. and Continental Dairy Products, Inc.

Proposal No. 4

This proposal seeks to amend the fluid milk product definition by including only stand-alone beverages that are determined by a skim-equivalent standard, removing the 6.5 percent nonfat milk solids standard, and excluding other dairy products in fluid form that are not intended to be used as stand-alone beverages.

1. Amend § 1000.15 by revising paragraphs (a) and (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraphs (b)(2) and (c), to read as follows:

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, fluid milk product means any product containing milk or milk products in fluid or frozen form

that is intended to be used as a stand-alone beverage. Fluid milk product includes any beverage products that are flavored, cultured, modified with added nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent and not more than 50 percent total milk solids.

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and whey;

(2) Products such as half-and-half, light cream, heavy cream, and whipping creams which, although fluid in form, are not intended for use as stand-alone beverages; and

(3) * * *

(c) The quantity of milk that is used in a product defined in paragraph (a) of this section shall be determined on a skim-equivalent basis.

Proposed by H.P. Hood LLC

Proposal No. 5

This proposal seeks to amend the fluid milk product definition to include any product that, based upon substantial evidence as determined by the Department, directly competes with other fluid milk products and whose classification would enhance producer revenues.

1. Amend § 1000.15 by revising paragraph (b)(2), to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content, provided that any product that would otherwise be excluded from the fluid milk product definition because it contains by weight less than 6.5 percent nonfat milk solids will nonetheless be deemed a fluid milk product if the Department makes a written determination, based on substantial evidence, that:

(i) The product directly competes with other fluid milk products; and

(ii) Treating the product as a fluid milk product will enhance producer revenues under the orders, taking into account both the revenues generated by the minimum class price resulting from that classification and the impact of that class price on consumer demand for the

product and the substitution of non-dairy ingredients.

Proposal No. 6

As an alternative to Proposal 5, this proposal seeks to amend the fluid milk product definition by authorizing, but not requiring, the Department to determine a product's nonfat milk solids content by applying only a skim milk equivalent standard with respect to any dried dairy ingredient.

1. Amend § 1000.15 by revising paragraph (b)(2), to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content, provided that, in determining whether a product contains by weight less than 6.5 percent nonfat milk solids, the Department shall be authorized, but not required to apply that test on a skim milk equivalent basis only with respect to any dairy ingredient utilized in dried form.

Proposed by National Milk Producers Federation

Proposal No. 7

This proposal seeks to amend the fluid milk product definition by removing the reference to the 6.5 percent nonfat milk solids standard and whey, and adopting a milk protein standard.

1. Amend § 1000.15 by revising paragraph (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and any product that contains by weight less than 2.25 percent milk protein; and

* * * * *

Proposed by The Dannon Company Inc.

Proposal No. 8

This proposal seeks to amend the fluid milk product definition by excluding yogurt-containing beverages.

1. Amend § 1000.15 by revising paragraph (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, yogurt-containing beverages, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

* * * * *

Proposed by General Mills, Inc.

Proposal No. 9

This proposal seeks to amend the fluid milk product definition to exclude drinkable food products with no more than 2.2 percent skim milk protein provided the product contains at least 20 percent yogurt (nonfat yogurt, lowfat yogurt or yogurt) by weight.

Proposed by Novartis Nutrition Corporation

Proposal No. 10

This proposal seeks to amend the fluid milk product definition to exclude formulas prepared for dietary use by removing the words "(meal replacement) that are packaged in hermitically-sealed containers." The proposal removes the 6.5 percent nonfat milk solids standard.

1. Amend § 1000.15 by revising paragraph (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use, and whey; and

* * * * *

Proposed by Hormel Foods, LLC

Proposal No. 11

This proposal seeks to amend the fluid milk product definition and the corresponding classification of milk utilization provision to exclude health-care beverages as fluid milk products.

1. Amend § 1000.15 by revising paragraph (b)(1) to read as follows:

§ 1000.15 Fluid milk product.

* * * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding, nutrient enhanced (fortified) formulas especially prepared for the health care industry or dietary use (meal replacement) that are

packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

* * * * *

2. Amend § 1000.40 by revising paragraph (b)(2)(vi) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(b) * * *

(2) * * *

(vi) Formulas especially prepared for infant feeding; nutrient enhanced (fortified) formulas especially prepared for the health care industry, or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service

Proposal No. 12

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1083, 1400 Independence Avenue, SW., Washington, DC 20250—9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

- Office of the Secretary of Agriculture;
Office of the Administrator, Agricultural Marketing Service;
Office of the General Counsel; and
Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: April 6, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-7271 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM305; Notice No. 25-05-04-SC]

Special Conditions: Airbus Model A380-800 Airplane; Dynamic Braking, Interaction of Systems and Structures, Limit Pilot Forces, Side Stick Controllers, Dive Speed Definition, Electronic Flight Control System-Lateral-Directional Stability, Longitudinal Stability, and Low Energy Awareness, Electronic Flight Control System-Control Surface Awareness, Electronic Flight Control System-Flight Characteristics Compliance Via the Handling Qualities Rating Method, Flight Envelope Protection-General Limiting Requirements, Flight Envelope Protection-Normal Load Factor (G) Limiting, Flight Envelope Protection-High Speed Limiting, Flight Envelope Protection-Pitch and Roll Limiting, Flight Envelope Protection-High Incidence Protection and Alpha-Floor Systems, High Intensity Radiated Fields (HIRF) Protection, and Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380-800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include side stick controllers, a body landing gear in addition to conventional wing and nose landing gears, electronic flight control systems, and flight envelope protection. These proposed special conditions also pertain to the effects of such novel or unusual design features, such as their effects on the structural performance of the airplane. Finally, the proposed special conditions pertain to the effects of certain conditions on these novel or unusual design features, such as the effects of high intensity radiated fields (HIRF) or of operation without

normal electrical power. Additional special conditions will be issued for other novel or unusual design features of the Airbus A380-800 airplanes. A list is provided in the section of this document entitled "Discussion of Novel or Unusual Design Features."

DATES: Comments must be received on or before May 27, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM305, 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. NM305. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-1357; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed 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 notice 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 the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on

which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX-100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR-100, granted Airbus' request for the 7-year period based on the date of application to the JAA.

In its letter AI/LE-A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380-800 has been moved from May 2005, to January 2006, in order to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380-800 airplane was adjusted to reflect the new application date.

The Model A380-800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380-800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380-800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special

conditions, the Airbus Model A380–800 airplane 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. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the “Noise Control Act of 1972.”

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

The Airbus A380–800 airplane will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. The special conditions proposed for Airbus Model A380 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.

These proposed special conditions are identical or nearly identical to those previously required for type certification of the basic Model A340 airplane or earlier models. One exception is the special condition pertaining to Interaction of Systems and Structures. It was not required for the basic Model A340 but was required for type certification of the larger, heavier Model A340–500 and –600 airplanes.

In general, the proposed special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe’s Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry. In some

cases, a draft Notice of Proposed Rulemaking has been prepared but no final rule has yet been promulgated.

Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane. Those proposed special conditions pertain to the following topics:

- Fire protection,
- Evacuation, including availability of stairs in an emergency,
- Emergency exit arrangement—outside viewing,
- Escape system inflation systems,
- Escape systems installed in non-pressurized compartments,
- Ground turning loads,
- Crashworthiness,
- Flotation and ditching,
- Discrete gust requirements,
- Transient engine failure loads,
- Airplane jacking loads,
- Landing gear pivoting loads,
- Design roll maneuvers, and
- Extendable length escape systems.

1. Dynamic Braking

The A380 landing gear system will include body gear in addition to the conventional wing and nose gear. This landing gear configuration may result in more complex dynamic characteristics than those found in conventional landing gear configurations. Section 25.493(d) by itself does not contain an adequate standard for assessing the braking loads for the A380 landing gear configuration.

Due to the potential complexities of the A380 landing gear system, in addition to meeting the requirements of § 25.493(d), a rational analysis of the braked roll conditions is necessary. Airbus Model A340–500 and –600 also have a body-mounted main landing gear in addition to the wing and nose gears. Therefore, a special condition similar to that required for that model is appropriate for the model A380–800.

2. Interaction of Systems and Structures

The A380 is equipped with systems which affect the airplane’s structural performance either directly or as a result of failure or malfunction. The effects of these systems on structural performance must be considered in the certification analysis. This analysis must include consideration of normal operation and of failure conditions with required structural strength levels related to the probability of occurrence.

Previously, special conditions have been specified to require consideration of the effects of systems on structures. The special condition proposed for the Model A380 is nearly identical to that issued for the Model A340–500 and –600 series airplanes.

3. Limit Pilot Forces

Like some other Airbus models, the Model A380 airplane is equipped with a side stick controller instead of a conventional control stick. This kind of controller is designed to be operated using only one hand. The requirement of § 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not appropriate for a side stick controller. Therefore, a special condition is necessary to specify the appropriate loading conditions for this kind of controller.

A special condition for side stick controllers has already been developed for the Airbus model A320 and A340 airplanes, both of which also have a side stick controller instead of a conventional control stick. The same special condition would be appropriate for the model A380 airplane.

4. Side Stick Controllers

The A380—like its predecessors, the A320, A330, and A340—will use side stick controllers for pitch and roll control. Regulatory requirements for conventional wheel and column controllers, such as requirements pertaining to pilot strength and controllability, are not directly applicable to side stick controllers. In addition, pilot control authority may be uncertain, because the side sticks are not mechanically interconnected as with conventional wheel and column controls.

In previous Airbus airplane certification programs, special conditions pertaining to side stick controllers were addressed in three separate issue papers, entitled “Pilot Strength,” “Pilot Coupling,” and “Pilot Control.” The resulting separate special conditions are combined in this special condition under the title of “Side Stick Controllers.” In order to harmonize with the JAA, the following has been added to Special Condition 4.c. Side Stick Controllers:

Pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

5. Dive Speed Definition

Airbus proposes to reduce the speed spread between V_C and V_D required by § 25.335(b), based on the incorporation of a high speed protection system in the A380 flight control laws. The A380—like the A320, A330, and A340—is equipped with a high speed protection system which limits nose down pilot

authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

Section 25.335(b)(1) is an analytical envelope condition which was originally adopted in Part 4b of the Civil Air Regulations to provide an acceptable speed margin between design cruise speed and design dive speed. Freedom from flutter and airframe design loads is affected by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for all potential overspeed conditions, including non-symmetric ones. To establish that all potential overspeed conditions are enveloped, the applicant should demonstrate either of the following:

- Any reduced speed margin—based on the high speed protection system in the A380—will not be exceeded in inadvertent or gust induced upsets, resulting in initiation of the dive from non-symmetric attitudes; or
- The airplane is protected by the flight control laws from getting into non-symmetric upset conditions.

In addition, the high speed protection system in the A380 must have a high level of reliability.

6. *Electronic Flight Control System: Lateral-Directional Stability, Longitudinal Stability, and Low Energy Awareness*

In lieu of compliance with the regulations pertaining to lateral-directional and longitudinal stability, this special condition ensures that the model A380 will have suitable airplane handling qualities throughout the normal flight envelope (reference paragraphs 6.a. and 6.b.).

The unique features of the A380 flight control system and side-stick controllers, when compared with conventional airplanes with wheel and column controllers, do not provide conventional awareness to the flight crew of a change in speed or a change in the direction of flight (reference paragraph 6.c.). This special condition requires that adequate awareness be provided to the pilot of a low energy state (low speed, low thrust, and low altitude) below normal operating speeds.

a. Lateral-Directional Static Stability: The model A380 airplane has a flight control design feature within the normal operational envelope in which side stick deflection in the roll axis commands roll rate. As a result, the stick force in

the roll axis will be zero (neutral stability) during the straight, steady sideslip flight maneuver of § 25.177(c) and will not be “substantially proportional to the angle of sideslip,” as required by the regulation.

The electronic flight control system (EFCS) on the A380 as on its predecessors—the A320, A330 and A340—contains fly-by-wire control laws that result in neutral lateral-directional static stability. Therefore, the conventional requirements of the regulations are not met.

With conventional control system requirements, positive static directional stability is defined as the tendency to recover from a skid with the rudder free. Positive static lateral stability is defined as the tendency to raise the low wing in a sideslip with the aileron controls free. The regulations are intended to accomplish the following:

- Provide additional cues of inadvertent sideslips and skids through control force changes.
- Ensure that short periods of unattended operation do not result in any significant changes in yaw or bank angle.
- Provide predictable roll and yaw response.
- Provide acceptable level of pilot attention (*i.e.*, workload) to attain and maintain a coordinated turn.

b. Longitudinal Static and Dynamic Stability: The longitudinal flight control laws for the A380 provide neutral static stability within the normal operational envelope. Therefore, the airplane design does not comply with the static longitudinal stability requirements of §§ 25.171, 25.173, and 25.175.

Static longitudinal stability on conventional airplanes with mechanical links to the pitch control surface means that a pull force on the controller will result in a reduction in speed relative to the trim speed, and a push force will result in higher than trim speed. Longitudinal stability is required by the regulations for the following reasons:

- Speed change cues are provided to the pilot through increased and decreased forces on the controller.
- Short periods of unattended control of the airplane do not result in significant changes in attitude, airspeed or load factor.
- A predictable pitch response is provided to the pilot.
- An acceptable level of pilot attention (*i.e.*, workload) to attain and maintain trim speed and altitude is provided to the pilot.
- Longitudinal stability provides gust stability.

The pitch control movement of the side stick is a normal load factor or “g”

command which results in an initial movement of the elevator surface to attain the commanded load factor. That movement is followed by integrated movement of the stabilizer and elevator to automatically trim the airplane to a neutral (1g) stick-free stability. The flight path commanded by the initial side stick input will remain stick-free until the pilot gives another command. This control function is applied during “normal” control law within the speed range from V_{aprot} (the speed at the angle of attack protection limit) to V_{MO} to M_{MO} . Once outside this speed range, the control laws introduce the conventional longitudinal static stability as described above.

As a result of neutral static stability, the A380 does not meet the requirements of part 25 for static longitudinal stability.

c. Low Energy Awareness: Static longitudinal stability provides an awareness to the flight crew of a low energy state (low speed and thrust at low altitude). Past experience on airplanes fitted with a flight control system which provides neutral longitudinal stability shows there are insufficient feedback cues to the pilot of excursion below normal operational speeds. The maximum angle of attack protection system limits the airplane angle of attack and prevents stall during normal operating speeds, but this system is not sufficient to prevent stall at low speed excursions below normal operational speeds. Until intervention, there are no stability cues, because the airplane remains trimmed. Additionally, feedback from the pitching moment due to thrust variation is reduced by the flight control laws. Recovery from a low speed excursion may become hazardous when the low speed is associated with low altitude and the engines are operating at low thrust or with other performance limiting conditions.

7. *Electronic Flight Control System: Control Surface Awareness*

With a response-command type of flight control system and no direct coupling from cockpit controller to control surface, such as on the A380, the pilot is not aware of the actual surface deflection position during flight maneuvers. Some unusual flight conditions, arising from atmospheric conditions or airplane or engine failures or both, may result in full or nearly full surface deflection. Unless the flight crew is made aware of excessive deflection or impending control surface deflection limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in a way which would cause loss of control or other

unsafe handling or performance characteristics.

This special condition requires that suitable annunciation be provided to the flight crew when a flight condition exists in which nearly full control surface deflection occurs. Suitability of such a display must take into account that some pilot-demanded maneuvers (e.g., rapid roll) are necessarily associated with intended full or nearly full control surface deflection. Therefore, simple alerting systems which would function in both intended or unexpected control-limiting situations must be properly balanced between needed crew awareness and not getting nuisance warnings.

8. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Qualities Rating Method (HQRM)

The Model A380 airplane will have an Electronic Flight Control System (EFCS). This system provides an electronic interface between the pilot's flight controls and the flight control surfaces (for both normal and failure states). The system also generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because EFCS technology has outpaced existing regulations—written essentially for unaugmented airplanes with provision for limited ON/OFF augmentation—suitable special conditions and a method of compliance are required to aid in the certification of flight characteristics.

This special condition and the method of compliance presented in Appendix 7 of the Flight Test Guide, AC 25-7A, provide a means by which one may evaluate flight characteristics—as, for example, “satisfactory,” “adequate,” or “controllable”—to determine compliance with the regulations. The HQRM in Appendix 7 was developed for airplanes with control systems having similar functions and is employed to aid in the evaluation of the following:

- All EFCS/airplane failure states not shown to be extremely improbable and where the envelope (task) and atmospheric disturbance probabilities are each 1.
- All combinations of failures, atmospheric disturbance level, and flight envelope not shown to be extremely improbable.

The HQRM provides a systematic approach to the assessment of handling qualities. It is not intended to dictate program size or need for a fixed number of pilots to achieve multiple opinions. The airplane design itself and success in

defining critical failure combinations from the many reviewed in Systems Safety Assessments would dictate the scope of any HQRM application.

Handling qualities terms, principles, and relationships familiar to the aviation community have been used to formulate the HQRM. For example, we have established that the well-known COOPER-HARPER rating scale and the proposed FAA three-part rating system are similar. This approach is derived in part from the contract work on the flying qualities of highly augmented/relaxed static stability airplanes, in relation to regulatory and flight test guide requirements. The work is reported in DOT/FAA/CT-82/130, *Flying Qualities of Relaxed Static Stability Aircraft*, Volumes I and II.

9. Flight Envelope Protection: General Limiting Requirements

This special condition and the following ones—pertaining to flight envelope protection—present general limiting requirements for all the unique flight envelope protection features of the basic A380 Electronic Flight Control System (EFCS) design. Current regulations do not address these types of protection features. The general limiting requirements are necessary to ensure a smooth transition from normal flight to the protection mode and adequate maneuver capability. The general limiting requirements also ensure that the structural limits of the airplane are not exceeded. Furthermore, failure of the protection feature must not create hazardous flight conditions. Envelope protection parameters include angle of attack, normal load factor, bank angle, pitch angle, and speed. To accomplish these envelope protections, one or more significant changes occur in the EFCS control laws as the normal flight envelope limit is approached or exceeded.

Each specific type of envelope protection is addressed individually in the special conditions which follow.

10. Flight Envelope Protection: Normal Load Factor (G) Limiting

The A380 flight control system design incorporates normal load factor limiting on a full time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This limiting feature is active in all normal and alternate flight control modes and cannot be overridden by the pilot. There is no requirement in the regulations for this limiting feature.

Except for the Airbus airplanes with fly-by-wire flight controls, the normal load factor limit is unique in that

traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope in which maneuverability in excess of limit structural design values is possible.

Part 25 does not require a demonstration of maneuver control or handling qualities beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency, such as upset recoveries or collision avoidance. Airbus is aware of the concern and has published the results of its research which indicate the following:

- Pilots rarely, if ever, use the excess maneuvering capacity in collision avoidance maneuvers, and
- Other features of its flight control system would have prevented most, if not all, of the upset cases on record where pilots did exceed limit loads during recovery.

Because Airbus has chosen to include this optional design feature for which part 25 does not contain adequate or appropriate safety standards, a proposed special condition pertaining to this feature is included. This special condition establishes minimum load factor requirements to ensure adequate maneuver capability during normal flight.

11. Flight Envelope Protection: High Speed Limiting

The longitudinal control law design of the A380 incorporates a high speed limiting protection system in the normal flight mode. This system prevents the pilot from inadvertently or intentionally exceeding the airplane maximum design speeds, V_D/M_D . Part 25 does not address such a system that would limit or modify flying qualities in the high speed region.

The main features of the high speed limiting function are as follows:

- It protects the airplane against high speed/high mach number flight conditions beyond V_{MO}/M_{MO} .
- It does not interfere with flight at V_{MO}/M_{MO} , even in turbulent air.
- It still provides load factor limitation through the “pitch limiting” function described below.
- It restores positive static stability beyond V_{MO}/M_{MO} .

This special condition establishes requirements to ensure that operation of the high speed limiter does not impede normal attainment of speeds up to the overspeed warning.

12. Flight Envelope Protection: Pitch and Roll Limiting

Currently, part 25 does not specifically address flight characteristics associated with fixed attitude limits. Airbus proposes to implement pitch and roll attitude limiting functions on the A380 via the Electronic Flight Control System (EFCS) normal modes. These normal modes will prevent airplane pitch attitudes greater than +30 degrees and less than -15 degrees and roll angles greater than plus or minus 67 degrees. In addition, positive spiral stability is introduced for roll angles greater than 33 degrees at speeds below V_{MO}/M_{MO} . At speeds greater than V_{MO}/M_{MO} , the maximum aileron control force with positive spiral stability results in a maximum bank angle of 45 degrees.

This special condition establishes requirements to ensure that pitch limiting functions do not impede normal maneuvering and that pitch and roll limiting functions do not restrict or prevent attaining certain roll angles necessary for emergency maneuvering.

Special conditions to supplement § 25.143 concerning pitch and roll limits were developed for the A320, A330 and A340 in which performance of the limiting functions was monitored throughout the flight test program. The FAA expects similar monitoring to take place during the A380 flight test program to substantiate the pitch and roll attitude limiting functions and the appropriateness of the chosen limits.

13. Flight Envelope Protection: High Incidence Protection and Alpha-Floor Systems

The A380 is equipped with a high incidence protection system that limits the angle of attack at which the airplane can be flown during normal low speed operation and that cannot be overridden by the flight crew. The application of this limitation on the angle of attack affects the longitudinal handling characteristics of the airplane, so that there is no need for the stall warning system during normal operation. In addition, the alpha-floor function automatically advances the throttles on the operating engines whenever the airplane angle of attack reaches a predetermined high value. This function is intended to provide increased climb capability. This special condition thus addresses the unique features of the low

speed high incidence protection and the alpha-floor systems on the A380.

The high incidence protection system prevents the airplane from stalling, which means that the stall warning system is not needed during normal flight conditions. If there is a failure of the high incidence protection system that is not shown to be extremely improbable, the flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense, and stall warning must be provided in a conventional manner.

14. High Intensity Radiated Fields (HIRF) Protection

The Airbus Model A380-800 will utilize electrical and electronic systems which perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. There is no specific regulation that addresses requirements for protection of electrical and electronic systems from 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.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Airbus Model A380 airplane. This special condition requires that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption.

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, adequate protection from HIRF exists when there is compliance with either paragraph a. or b. below:

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

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

(2) Demonstration of this level of protection is established through system tests and analysis.

b. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below 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 root-mean-square (rms) values 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.

15. Operation Without Normal Electrical Power

These special conditions were developed to address fly-by-wire airplanes starting with the Airbus Model A330. As with earlier airplanes, the Airbus A380-800 fly-by-wire control system requires a continuous source of electrical power for the flight control system to remain operable.

Section 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rules (VFR) weather conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control while the crew took time to sort out the electrical failure, start the engine(s) if necessary, and re-establish some of the electrical power generation capability.

To maintain the same level of safety as that associated with traditional designs, the Model A380 design must not be time limited in its operation, including being without the normal source of engine or Auxiliary Power Unit (APU) generated electrical power. Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane

can continue through safe flight and landing—including steering and braking on the ground for airplanes using steer/brake-by-wire—using its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

PART 25—[AMENDED]

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

1. Dynamic Braking

In addition to the requirements of § 25.493(d), the following special condition applies:

Loads arising from the sudden application of maximum braking effort must be defined, taking into account the behavior of the braking system. Failure conditions of the braking system must be analyzed in accordance with the criteria specified in proposed special condition number 2, “Interaction of Systems and Structures.”

2. Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following special condition applies:

a. For airplanes equipped with systems that affect structural performance—either directly or as a result of a failure or malfunction—the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D. Paragraph c. below must be used to evaluate the structural performance of airplanes equipped with these systems.

b. Unless shown to be extremely improbable, the airplane must be designed to withstand any forced structural vibration resulting from any failure, malfunction, or adverse condition in the flight control system. These loads must be treated in accordance with the requirements of paragraph a. above.

c. Interaction of Systems and Structures

(1) General: The following criteria must be used for showing compliance with this special condition and with § 25.629 for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If this paragraph is used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in this paragraph.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this paragraph in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this paragraph.
Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight

occurrence and that are included in the flight manual (e.g., speed limitations and avoidance of severe weather conditions).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, and extremely improbable) used in this special condition are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309. However, this special condition applies only to system failure conditions that affect the structural performance of the airplane (e.g., system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

(2) Effects of Systems on Structures.

(a) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in Subpart C, taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (Static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered, when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) *System in the failure condition.* For any system failure condition not

shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established

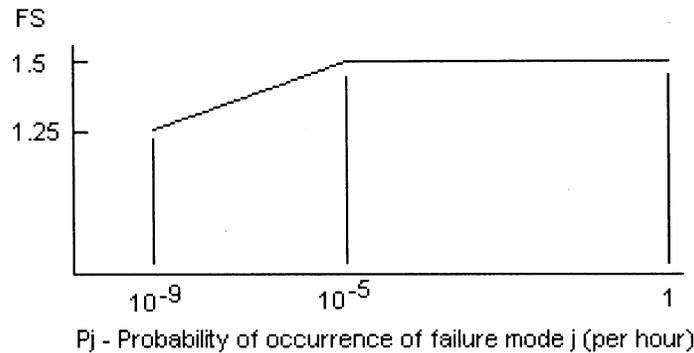
to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the

probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph (c)(1)(i) of this section.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C , freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce

loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to V_C or the speed limitation prescribed for the remainder of the flight must be determined:

(A) the limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(B) the limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(C) the limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

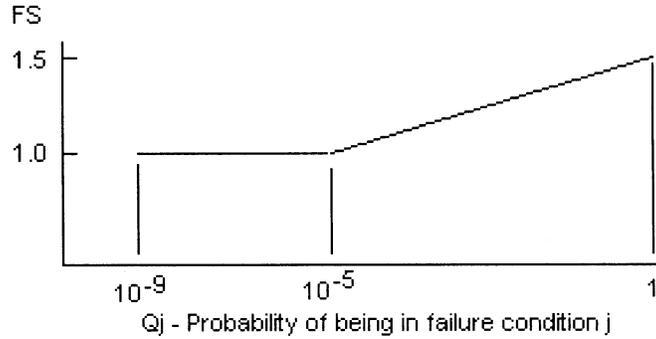
(D) the limit yaw maneuvering conditions specified in § 25.351.

(E) the limit ground loading conditions specified in § 25.473 and § 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph multiplied by a factor of safety, depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be

applied to all limit load conditions specified in Subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph (c)(2)(ii).

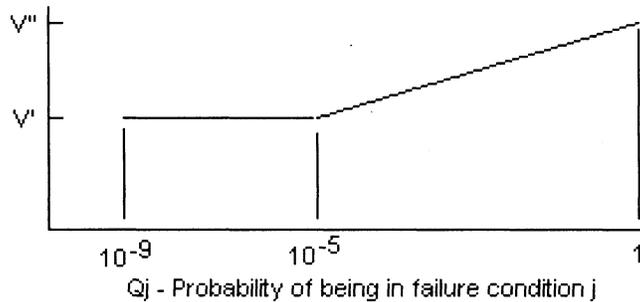
(iv) If the loads induced by the failure condition have a significant effect on

fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V' and V'' may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V' = Clearance speed as defined by § 25.629(b)(2).

V'' = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V'' .

(vi) Freedom from aeroelastic instability must also be shown up to V' in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of this Part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9} , criteria other than those specified in this paragraph may be used for structural

substantiation to show continued safe flight and landing.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. The flight crew must be made aware of these failures before flight. Certain elements of the control system, such as

mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C below 1.25 or flutter margins below V'' must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed, if the subsequent system failure rate is greater than 1E-3 per flight hour.

3. Limit Pilot Forces

In addition to the requirements of § 25.397(c) the following special condition applies:

The limit pilot forces are as follows:

a. For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 lbf	Nose left 100 lbf.
Nose down 200 lbf	Nose right 100 lbf.

b. For all other components of the side stick control assembly, but excluding the internal components of

the electrical sensor assemblies to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf	Nose left 50 lbf.
Nose down 125 lbf	Nose right 50 lbf.

4. Side Stick Controllers

In the absence of specific requirements for side stick controllers, the following special condition applies:

a. *Pilot strength:* In lieu of the "strength of pilots" limits shown in § 25.143(c) for pitch and roll and in lieu of the specific pitch force requirements of §§ 25.145(b) and 25.175(d), it must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

b. *Pilot control authority:* The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided and must not be confusing to the flight crew.

c. *Pilot control:* It must be shown by flight tests that the use of side stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/ tasks and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

d. *Autopilot quick-release control location:* In lieu of compliance with 25.1329(d), autopilot quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flight crew.

5. Dive Speed Definition

In lieu of the requirements of § 25.335(b)(1)—if the flight control system includes functions which act automatically to initiate recovery before the end of the 20 second period specified in § 25.335(b)(1)—the greater of the speeds resulting from the following special condition applies.

a. From an initial condition of stabilized flight at Vc/Mc, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a

load factor of 1.5 g (0.5 acceleration increment) or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data is used. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be used.

b. From a speed below Vc/Mc with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through Vc/Mc at a flight path 15 degrees below the initial path—or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees.

Note: The pilot's controls may be in the neutral position after reaching Vc/Mc and before recovery is initiated.

c. Recovery may be initiated three seconds after operation of high speed warning system by application of a load of 1.5g (0.5 acceleration increment) or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

d. The applicant must also demonstrate either that

(1) the speed margin, established as above, will not be exceeded in inadvertent or gust induced upsets, resulting in initiation of the dive from non-symmetric attitudes, or

(2) the airplane is protected by the flight control laws from getting into non-symmetric upset conditions.

e. The probability of failure of the protective system that mitigates for the reduced speed margin must be less than 10⁻⁵ per flight hour, except that the probability of failure may be greater than 10⁻⁵, but not greater than 10⁻³, per flight hour, provided that:

(1) Failures of the system are annunciated to the pilots, and

(2) The flight manual instructions require the pilots to reduce the speed of the airplane to a value that maintains a speed margin between VMO and VD consistent with showing compliance with 25.335(b) without the benefit of the system, and

(3) no dispatch of the airplane is allowed with the system inoperative.

6. Electronic Flight Control System: Lateral-Directional and Longitudinal Stability and Low Energy Awareness

In lieu of the requirements of § 25.171 and sub-section 25.177(c), the following special condition applies:

- a. The airplane must be shown to have suitable static lateral, directional, and longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance.
- b. The airplane must provide adequate awareness to the pilot of a low energy (low speed/low thrust/low height) state when fitted with flight control laws presenting neutral longitudinal stability significantly below the normal operating speeds.
- c. The static directional stability—as shown by the tendency to recover from a skid with the rudder free—must be positive for any landing gear and flap position and symmetrical power condition, at speeds from $1.13 V_{S1g}$ up to V_{FE} , V_{LE} , or V_{FC}/M_{FC} (as appropriate).
- d. In straight, steady sideslips (unaccelerated forward slips), the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must be between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles—up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds (81.72 kg) is obtained—the rudder pedal forces may not reverse, and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a suitable sideslip indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady, unyawed flight.

7. Electronic Flight Control System: Control Surface Awareness

In addition to the requirements of §§ 25.143, 25.671 and 25.672, the following special condition applies:

- a. A suitable flight control position annunciation must be provided to the crew in the following situation:
 - A flight condition exists in which—without being commanded by the crew—control surfaces are coming so close to their limits that return to normal flight and (or) continuation of safe flight requires a specific crew action.
- b. In lieu of control position annunciation, existing indications to the crew may be used to prompt crew action, if they are found to be adequate.

Note: The term “suitable” also indicates an appropriate balance between nuisance and necessary operation.

8. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Quantities Rating Method (HQRM)

a. Flight Characteristics Compliance Determination for EFCS Failure Cases: In lieu of compliance with § 25.672(c), the HQRM contained in Appendix 7 of AC 25–7A must be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable.

The handling qualities ratings are as follows:

- (1) *Satisfactory*: Full performance criteria can be met with routine pilot effort and attention.
 - (2) *Adequate*: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.
 - (3) *Controllable*: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration, so that the handling qualities are at least Adequate.
- b. Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope, as shown in Figure 12 of Appendix 7. Specifically, for probable failure conditions within the normal flight envelope, the pilot-rated handling qualities must be satisfactory in light atmospheric disturbance and adequate in moderate atmospheric disturbance. The handling qualities rating must not be less than adequate in light atmospheric disturbance for improbable failures.

Note: AC 25–7A, Appendix 7 presents a method of compliance and provides guidance for the following:

- Minimum handling qualities rating requirements in conjunction with atmospheric disturbance levels, flight envelopes, and failure conditions (Figure 12),
- Flight Envelope definition (Figures 5A, 6 and 7),
- Atmospheric Disturbance Levels (Figure 5B),
- Flight Control System Failure State (Figure 5C),
- Combination Guidelines (Figures 5D, 9 and 10), and
- General flight task list, from which appropriate specific tasks can be selected or developed (Figure 11).

9. Flight Envelope Protection

- a. *General Limiting Requirements*: (1) Onset characteristics of each envelope protection feature must be smooth,

appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change the airplane flight path, speed, or attitude, as needed.

(2) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with the following:

- (a) Airplane structural limits,
- (b) Required safe and controllable maneuvering of the airplane, and
- (c) Margins to critical conditions. Dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions—in any appropriate combination and phase of flight—must not result in a limited flight parameter beyond the nominal design limit value that would cause unsafe flight characteristics.

(3) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics, such as damping and overshoot, must also be appropriate for the flight maneuver and limit parameter in question.

(4) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

b. *Failure States*: EFCS failures, including sensor failures, must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The crew must be alerted by suitable means, if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

10. Flight Envelope Protection: Normal Load Factor (g) Limiting

In addition to the requirements of 25.143(a)—and in the absence of other limiting factors—the following special condition applies:

- a. The positive limiting load factor must not be less than:
 - (1) 2.5g for the EFCS normal state.
 - (2) 2.0g for the EFCS normal state with the high lift devices extended.
- b. The negative limiting load factor must be equal to or more negative than:
 - (1) Minus 1.0g for the EFCS normal state.
 - (2) 0.0g for the EFCS normal state with high lift devices extended.

Note: This Special Condition does not impose an upper bound for the normal load factor limit, nor does it require that the limit exist. If the limit is set at a value beyond the structural design limit maneuvering load factor “n,” indicated in § 25.333(b) and 25.337(b) and (c), there should be a very positive tactile feel built into the controller

and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

11. Flight Envelope Protection High Speed Limiting

In addition to § 25.143, the following special condition applies:

Operation of the high speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to the overspeed warning.

12. Flight Envelope Protection: Pitch and Roll Limiting

In addition to § 25.143, the following special condition applies:

a. The pitch limiting function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering—including a normal all-engines operating takeoff plus a suitable margin to allow for satisfactory speed control.

b. The pitch and roll limiting functions must not restrict or prevent attaining roll angles up to 65 degrees or pitch attitudes necessary for emergency maneuvering. Spiral stability, which is introduced above 33 degrees roll angle, must not require excessive pilot strength to achieve roll angles up to 65 degrees.

13. Flight Envelope Protection: High Incidence Protection and Alpha-Floor Systems

a. *Definitions.* For the purpose of this special condition, the following definitions apply:

High Incidence Protection System. A system that operates directly and automatically on the airplane's flying controls to limit the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.

Alpha-Floor System. A system that automatically increases thrust on the operating engines when the angle of attack increases through a particular value.

Alpha Limit. The maximum angle of attack at which the airplane stabilizes with the high incidence protection system operating and the longitudinal control held on its aft stop.

V_{min} The minimum steady flight speed is the stabilized, calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second, until the longitudinal pilot control is on its stop with the high incidence protection system operating.

V_{min1g} V_{min} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal

to its weight when at an angle of attack not greater than that determined for V_{min} .

b. *Capability and Reliability of the High Incidence Protection System:*

(1) It must not be possible to encounter a stall during pilot induced maneuvers, and handling characteristics must be acceptable, as required by Paragraphs e and f below, entitled High Incidence Handling Demonstrations and High Incidence Handling Characteristics respectively.

(2) The airplane must be protected against stalling due to the effects of windshears and gusts at low speeds, as required by Paragraph g below, entitled Atmospheric Disturbances.

(3) The ability of the high incidence protection system to accommodate any reduction in stalling incidence resulting from residual ice must be verified.

(4) The reliability of the system and the effects of failures must be acceptable, in accordance with § 25.1309 and Advisory Circular 25.1309-1A, System Design and Analysis.

(5) The high incidence protection system must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines operating takeoff plus a suitable margin to allow for satisfactory speed control.

c. *Minimum Steady Flight Speed and Reference Stall Speed:*

In lieu of the requirements of § 25.103, the following special condition applies:

(1) V_{min} The minimum steady flight speed, for the airplane configuration under consideration and with the high incidence protection system operating, is the final stabilized calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal pilot control is on its stop.

(2) The minimum steady flight speed, V_{min} , must be determined with:

(a) The high incidence protection system operating normally.

(b) Idle thrust.

(c) Alpha-floor system inhibited.

(d) All combinations of flap settings and landing gear positions.

(e) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(f) The most unfavorable center of gravity allowable, and

(g) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(3) V_{min1g} is V_{min} corrected to 1g conditions. V_{min1g} is the minimum

calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{min} . V_{min1g} is defined as follows:

$$V_{min1g} = \frac{V_{min}}{\sqrt{n_{zw}}}$$

Where:

n_{zw} = load factor normal to the flight path at V_{min}

(4) The Reference Stall Speed, V_{SR} , is a calibrated airspeed selected by the applicant. V_{SR} may not be less than the 1g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq \frac{V_{CLMAX}}{\sqrt{n_{zw}}}$$

Where:

V_{CLMAX} = Calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{ZW} W}{qS} \right)$$

is first a maximum during the maneuver prescribed in paragraph (5)(h) of this section.

n_{zw} = Load factor normal to the flight path at V_{CLMAX}

W = Airplane gross weight

S = Aerodynamic reference wing area, and

q = Dynamic pressure.

(5) V_{CLMAX} must be determined with the following conditions:

(a) Engines idling or—if that resultant thrust causes an appreciable decrease in stall speed—not more than zero thrust at the stall speed

(b) The airplane in other respects, such as flaps and landing gear, in the condition existing in the test or performance standard in which V_{SR} is being used.

(c) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(d) The center of gravity position that results in the highest value of reference stall speed.

(e) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR} .

(f) The alpha-floor system inhibited.

(g) The high incidence protection system adjusted to a high enough incidence to allow full development of the 1g stall.

(h) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that

the speed reduction does not exceed one knot per second.

(6) The flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense at FWD and AFT CG in straight and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this angle of attack for C_{LMAX} cannot be achieved, the angle of attack can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

d. Stall Warning. (1) *Normal Operation:* If the conditions of Paragraph b above which is entitled Capability and Reliability of the High Incidence Protection System are satisfied, a level of safety equivalent to that intended by § 25.207, Stall Warning, must be considered to have been met without provision of an additional, unique warning device.

(2) *Failure Cases:* Following failures of the high incidence protection system not shown to be extremely improbable, if the system no longer satisfies sub paragraphs (1), (2), and (3) of Paragraph b above which is entitled Capability and Reliability of the High Incidence Protection System, stall warning must be provided in accordance with § 25.207. The stall warning should prevent inadvertent stall under the following conditions:

(a) Power off straight stall approaches to a speed 5 percent below the warning onset.

(b) Turning flight stall approaches at entry rates up to 3 knots per second when recovery is initiated not less than one second after the warning onset.

e. High Incidence Handling Demonstrations: In lieu of the requirements of § 25.201, the following special condition applies:

Maneuvers to the limit of the longitudinal control in the nose up direction must be demonstrated in straight flight and in 30 degree banked turns under the following conditions:

(1) The high incidence protection system operating normally.

(2) Initial power condition of:

(a) Power off

(b) The power necessary to maintain level flight at $1.5 V_{SR1}$, where V_{SR1} is the reference stall speed with the flaps in the approach position, the landing gear retracted, and the maximum landing weight. The flap position to be used to determine this power setting is that position in which the stall speed, V_{SR1} , does not exceed 110% of the stall speed, V_{SR0} , with the flaps in the most extended landing position.

(3) Alpha-floor system operating normally, unless more severe conditions are achieved with alpha-floor inhibited.

(4) Flaps, landing gear and deceleration devices in any likely combination of positions.

(5) Representative weights within the range for which certification is requested, and

(6) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(7) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the control reaches the stop.

(8) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques.

(9) The requirements for turning flight maneuver demonstrations must also be met with accelerated rates of entry to the incidence limit, up to the maximum rate achievable.

f. High Incidence Handling Characteristics: In lieu of the requirements of § 25.203, the following special condition applies:

(1) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30 degree banked turns, the airplane's characteristics must be as follows:

(a) There must not be any abnormal airplane nose-up pitching.

(b) There must not be any uncommanded nose-down pitching that would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at alpha limit as the longitudinal control reaches the stop would be acceptable. Any reduction of pitch attitude associated with stabilizing the incidence at the alpha limit should be achieved smoothly and at a low pitch rate, such that it is not likely to be mistaken for natural stall identification.

(c) There must not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control by conventional use of the cockpit controllers throughout the maneuver.

(d) The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent to completing the maneuver.

(2) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized alpha-limit. However, the

airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal controller on the stop for a period of time appropriate to the maneuvers.

(3) It must always be possible to reduce incidence by conventional use of the controller.

(4) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds such as V_2 and V_{REF} up to alpha-limit must not be unduly damped or significantly slower than can be achieved on conventionally controlled transport airplanes.

g. Atmospheric Disturbances: Operation of the high incidence protection system and the alpha-floor system must not adversely affect aircraft control during expected levels of atmospheric disturbances or impede the application of recovery procedures in case of windshear. Simulator tests and analysis may be used to evaluate such conditions but must be validated by limited flight testing to confirm handling qualities at critical loading conditions.

h. Alpha Floor: The alpha-floor setting must be such that the aircraft can be flown at normal landing operational speed and maneuvered up to bank angles consistent with the flight phase, including the maneuver capabilities specified in 25.143(g), without triggering alpha-floor. In addition, there must be no alpha-floor triggering, unless appropriate, when the airplane is flown in usual operational maneuvers and in turbulence.

i. Proof of Compliance: In addition to the requirements of § 25.21, the following special condition applies:

The flying qualities must be evaluated at the most unfavorable center of gravity position.

j. Longitudinal Control: (1) In lieu of the requirements of § 25.145(a) and 25.145(a)(1), the following special condition applies:

It must be possible—at any point between the trim speed for straight flight achievable by the automatic trim system and V_{min} —to pitch the nose downward, so that the acceleration to this selected trim speed is prompt, with the airplane trimmed for straight flight at the speed achievable by the automatic trim system.

(2) In lieu of the requirements of § 25.145(b)(6), the following special condition applies:

With power off, flaps extended and the airplane trimmed at $1.3 V_{SR1}$, obtain and maintain airspeeds between V_{min} and either $1.6 V_{SR1}$ or V_{FE} , whichever is lower.

k. Airspeed Indicating System: (1) In lieu of the requirements of subsection 25.1323(c)(1), the following special condition applies:

V_{MO} to V_{min} with the flaps retracted.

(2) In lieu of the requirements of subsection 25.1323(c)(2), the following special condition applies:

V_{min} to V_{FE} with flaps in the landing position.

14. High Intensity Radiated Fields (HIRF) Protection

a. Protection from Unwanted Effects of High-intensity Radiated Fields:

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

b. For the purposes of this special condition, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

15. Operation Without Normal Electrical Power

In lieu of the requirements of § 25.1351(d), the following special condition applies:

It must be demonstrated by test or combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (*i.e.*, electrical power sources, excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Issued in Renton, Washington, on March 29, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-7320 Filed 4-11-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-20574; Airspace Docket No. 05-ACE-11]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Chillicothe, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Chillicothe, MO. It also proposes to modify the Class E5 airspace at Chillicothe, MO.

DATES: Comments for inclusion in the Rules Docket must be received on or before May 13, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2005-20574/Airspace Docket No. 05-ACE-11, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in

triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2005-20574/Airspace Docket No. 05-ACE-11." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Chillicothe, MO. Controlled airspace extending upward from the surface area for an airport at Chillicothe, MO. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Chillicothe Municipal Airport. Weather observations would be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications would be direct with Columbia Automated Flight Service Station.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Chillicothe, MO. An examination of this Class E airspace area for Chillicothe, MO revealed noncompliance with FAA directives. This proposal would correct identified discrepancies by increasing the area from a 6.4-mile to a 6.9-mile radius of Chillicothe Municipal Airport, defining the extension to the airspace

area in terms of the Chillicothe nondirectional radio beacon (NDB), modifying the bearing of the extension, correcting errors in the identified location of the Chillicothe NDB, defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Chillicothe Municipal Airport and bringing the airspace area into compliance with FAA directives. Both areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designed as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Chillicothe Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Chillicothe, MO

Chillicothe Municipal Airport, MO
(Lat. 39°46'56" N., long. 93°29'44" W.)
Chillicothe NDB
(Lat. 39°46'38" N., long. 93°29'39" W.)

Within a 4.4-mile radius of Chillicothe Municipal Airport and within 2.5 miles each side of the 335° bearing from the Chillicothe NDB extending from the 4.4-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

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

* * * * *

ACE MO E5 Chillicothe, MO

Chillicothe Municipal Airport, MO
(Lat. 39°46'56" N., long. 93°29'44" W.)
Chillicothe NDB
(Lat. 39°46'38" N., long. 93°29'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Chillicothe Municipal Airport and within 2.5 miles each side of the 335° bearing from the Chillicothe NDB extending from the 6.9-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO, on March 25, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–7319 Filed 4–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–160315–03]

RIN 1545–BC89

Sickness or Accident Disability Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–160315–03) that was published in the **Federal Register** on Friday, March 11, 2005 (70 FR 12164) that provide guidance regarding the treatment of payments made on account of sickness or accident disability under a workers' compensation law for purposes of the Federal Insurance Contributions Act (FICA).

FOR FURTHER INFORMATION CONTACT: David Ford, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–160315–03) that is the subject of this correction is under section 3121 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–160315–03) which is the subject of FR. Doc. 05–4382 is corrected as follows:

On page 12164, column 1, in the preamble, under the paragraph heading, **FOR FURTHER INFORMATION CONTACT**, lines 6 through 8, the language "comments, the hearing and/or to be placed on the building access list to attend the hearing, LaNita M. Vandyke," is corrected to read "comments, LaNita Vandyke,".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Specialist, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 05–7324 Filed 4–11–05; 8:45 am]

BILLING CODE 4301–01–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[CGD08-05-014]

RIN 1625-AA09

Drawbridge Operation Regulation; Illinois Waterway, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Jefferson Street Bridge, mile 287.9, and Cass Street Bridge, mile 288.1, across the Illinois Waterway at Joliet, Illinois. The drawbridges need not open for river traffic and may remain in the closed-to-navigation position from 8:30 a.m. to 11:30 a.m. on May 15, 2005. This proposed rule would allow the scheduled running of a foot race as part of a local community event.

DATES: Comments and related material must reach the Coast Guard on or before May 12, 2005.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103-2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD-08-05-014), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like confirmation that they reached us,

please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

On February 10, 2005, the Illinois Department of Transportation requested a temporary change to the operation of the Jefferson Street Bridge, mile 287.9, and the Cass Street Bridge, mile 288.1, Illinois Waterway, to allow the drawbridges to remain in the closed-to-navigation position for a three hour period for a timed 8K run in the City of Joliet, Illinois. The drawbridges have a vertical clearance of 16.5 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft that will be minimally impacted by the limited closure period of three hours. Presently, the draws open on signal, except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m., Monday through Saturday. The Illinois Department of Transportation requested the drawbridges be permitted to remain in the closed-to-navigation position from 8:30 a.m. until 11:30 a.m. on Sunday, May 15, 2005. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

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).

The Coast Guard expects that this temporary change to operation of the Jefferson Street Bridge and the Cass Street Bridge will have minimal economic impact on commercial traffic operating on the Illinois Waterway. This

temporary change has been written in such a manner as to allow for minimal interruption of the drawbridges regular operation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will be in effect for only 3 hours early on a Sunday morning, and the Coast Guard expects the impact of this action to be minimal.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539-3900, extension 2378.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and

have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that 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 (32)(e) of the Instruction, from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridges, it falls within this exclusion. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8:30 a.m. to 11:30 a.m. on May 15, 2005, in § 117.393, *suspend paragraph (c) and add a new paragraph (f)* to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

(f) The draws of the McDonough Street Bridge, mile 287.3; Jackson Street bridge, mile 288.4; and Ruby Street bridge, mile 288.7; all of Joliet, shall open on signal. However, the draws of Jefferson Street bridge, mile 287.9, and Cass Street bridge, mile 288.1 need not open.

Dated: April 4, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 05–7326 Filed 4–11–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–GA–0002–200504(b); FRL–7898–4]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (GAEPD), on December 18, 2003. These revisions pertain to rules for Enhanced Inspection and Maintenance (I/M). These revisions were the subject of a public hearing held on November 5, 2003, adopted by the Board of Natural Resources on December 3, 2003, and became State effective on December 25, 2003. In the Final Rules Section of this **Federal Register**, the EPA is approving the State’s SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 12, 2005.

ADDRESSES: Comments may be submitted by mail to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9036. Mr. Martin can also be reached via electronic mail at martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: March 28, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05-7307 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-TX-0019; FRL-7898-6]

Approval and Promulgation of Implementation Plans; Texas; Agreed Orders in the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan (SIP). This rulemaking covers eight Agreed Orders with six companies in the Beaumont/Port Arthur (B/PA) ozone nonattainment area. We are approving the eight Agreed Orders between the State of Texas and the six companies in Southeast Texas as a strengthening of the Texas SIP. These Agreed Orders will contribute to the improvement in air quality in the B/PA nonattainment area and will continue to contribute to the maintenance of the ozone standard in the southeastern portion of the State of Texas. The EPA is proposing to approve this SIP in accordance with the requirements of the Federal Clean Air Act (the Act), sections 110 and 116.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP Revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If the EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based upon this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive significant adverse comments on an amendment, paragraph or section of this rule and if that provision is independent of the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before May 12, 2005.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7242; fax number 214-665-

7263; e-mail address donaldson.guy@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives significant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives significant adverse comment on an amendment, paragraph, or section of this rule and if that provision is independent of the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 11, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 05-7303 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04-OAR-2004-GA-0003-200427; FRL-7897-9]

Approval and Promulgation of Implementation Plans Georgia: Vehicle Miles Traveled State Implementation Plan for the Atlanta 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD) on June 30, 2004, regarding the Severe Area Vehicles Miles Traveled (VMT) SIP for the Atlanta 1-Hour Ozone Nonattainment Area for the purpose of offsetting any growth in emissions from

growth in VMT as required by the Clean Air Act (CAA or the Act) as Amended in 1990. The State demonstrated that emissions from increases in VMT, or numbers of vehicle trips, within the Atlanta area did not rise above an established ceiling by 2004. The rationale for this proposed approval is set forth below.

DATES: Written comments must be received on or before May 12, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2004-GA-0003, by one of the following methods:

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

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

3. E-mail: martin.scott@epa.gov.

4. Fax: 404-562-9019.

5. Mail: "R04-OAR-2004-GA-0003", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

6. Hand Delivery or Courier. Deliver your comments to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04-OAR-2004-GA-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov,

or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9036. Mr. Martin can also be reached via electronic mail at martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. Background

The Atlanta 1-hour ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale. Atlanta was classified as a serious 1-hour ozone nonattainment area on November 6, 1991, (see 56 FR 56694), with an attainment deadline of 1999. Atlanta failed to attain the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1999, and was reclassified from a serious to a severe 1-hour ozone nonattainment area effective January 1, 2004, (see 68 FR 55469). In addition to being required to meet SIP revision requirements for marginal, moderate, and serious ozone nonattainment areas, Georgia is required to submit plans required for severe areas, which includes submission of a VMT Offset SIP under section 182(d)(1)(A) of the Act.

On February 1, 2005, the State submitted to EPA a redesignation request and maintenance plan for the Atlanta 1-hour ozone nonattainment area that is based on actual ozone monitoring data for the years 2002 to 2004. The data submitted indicates that no violations of the one-hour ozone NAAQS occurred in Atlanta between 2002 and the attainment year of 2004. EPA is addressing Georgia's redesignation request through a separate notice.

II. 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 submit a SIP revision that identifies and adopts transportation control strategies and TCMs necessary to offset increases in emissions resulting from growth in VMT (the VMT offset SIP), and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's Reasonable Further Progress (RFP) milestones and attainment demonstration requirements (RFP and attainment demonstration SIPs). 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 Atlanta area to severe nonattainment, EPA established the submission deadline of June 30, 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 55469). EPA's action today relates only to the VMT offset SIP requirement from section 182(d)(1)(A) that the State demonstrate whether TCMs are needed to offset increases in emissions resulting from growth of VMTs. The other requirements of section 182(d)(1)(A), whether TCMs are needed to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's RFP milestones and attainment demonstration requirements, are being addressed by EPA in a separate notice.

III. Analysis of State Submittal

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, vehicle emissions are modeled to represent the effects of required reductions from the following mandatory programs: an enhanced inspection and maintenance (I/M) program, Phase 2 reid vapor pressure (RVP) fuel, reformulated gasoline, and the federal motor vehicle control program (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.

Calculation of Vehicle Miles Traveled 1999–2004

Section III A(5)(d) of the General Preamble says that states should project motor vehicle emissions for their VMT SIP revisions in accordance with EPA's "Section 187" guidance. Section 187 VMT Forecasting and Tracking Guidance, U.S. EPA, January, 1992, <http://www.epa.gov/oms/transp/vmtrack/vmtguide.zip>. According to part 1.3 of the Section 187 guidance, "EPA has chosen to specify the use of the [Highway Performance Monitoring System(HPMS)] approach in this guidance for purposes of tracking * * * VMT * * * For forecasting VMT, network models were chosen as the best method. Though these models are not considered to be a superior source of historical area-wide VMT * * * they are considered to be the best predictor of growth factors for VMT forecasts."

For this analysis, EPD estimated emissions using motor vehicle activity data from two sources. "Actual" VMT obtained from the Georgia Department of Transportation (GDOT) were used where available, *i.e.*, for the years 1999 through 2002. The VMT in these "445 reports" are count-based estimates which are reported to Federal Highway Administration (FHWA) each year. A State's HPMS data is required to be submitted annually, by June 15 of the year following the data year. The 445 reports are available on this GDOT Web page: http://www.dot.state.ga.us/dot/plan-prog/transportation_data/400reports/index.shtml.

For the years 2003 and 2004, VMT estimates from the Atlanta Regional Commission's (ARC) network-based travel demand model were used to develop growth factors. These growth factors were then applied to 2002 "actual" VMT to obtain projected VMT. The same ARC model used in developing mobile source emissions estimates for Georgia's recently submitted Post-1999 Rate of Progress (ROP) plan was used. This model was substantially revised and enhanced. See "Travel Demand Model Enhancements Reflected in Projected Emissions Inventories" in Appendix A of the Post-1999 ROP Plan for details: http://www.dnr.state.ga.us/dnr/environ/plans_files/plans/

app_a_mobile_modeling.pdf in 2003 and underwent a significant recalibration to Census 2000 data, including updated population and employment estimates.

Consistent with EPA guidance "HPMS-based annual average daily VMT should * * * be adjusted for seasonal effects * * *". VMT for ozone non-attainment areas should be adjusted to the summer season. * * * Pursuant to Section 3.4.1.3.3 of EPA's guidance entitled "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources," EPA-420-R-92-009, U.S. EPA, Office of Air and Radiation, Office of Mobile Sources, 1992, <http://www.epa.gov/otaq/invntory/r92009.pdf>, annual average daily vehicle miles traveled were converted to summer daily vehicle miles traveled (SDVMT) using seasonal adjustment factors obtained from GDOT.

Table 1 below shows 13-county total SDVMT for the years 1999 through 2004.

TABLE 1.—13-COUNTY ATLANTA AREA SUMMER DAILY VEHICLE MILES TRAVELED, 1999 TO 2004

Year	SDVMT
1999	118,478,178
2000	121,147,325
2001	123,985,255
2002	125,091,783
2003	128,763,973
2004	132,436,163

Calculation of Emissions

In consultation between EPD and EPA Region 4, it was decided that, in fulfilling the VMT SIP requirement, Georgia could calculate motor vehicle emissions from 1999, the attainment deadline for serious ozone nonattainment areas, through Atlanta's severe area attainment year of 2004. Although the Act's requirement only applies to VOC emissions, nitrogen oxide (NO_x) as well as VOC emissions were included separately in the analysis.

EPD performed an analysis of projected highway mobile source emissions for the years of 1999 through 2004 for the 13-county Atlanta nonattainment area which demonstrated that projected motor vehicle VOC and NO_x emissions were not higher during the ozone season of any one year than during the ozone season in the preceding year. For each year from 1999 through 2004, typical summer day highway mobile source emissions inventories were estimated for the 13-county 1-hour ozone nonattainment area. These inventories reflect the most

recent planning assumptions available and include all Federal and State mobile source control rules, including enhanced I/M, Stage II vapor recovery, federal tailpipe standards, and low-sulfur low-volatility Georgia gasoline.

Control Measures Modeled

Georgia EPD used the MOBILE6.2 model to calculate motor vehicle emission rates reflecting all Federal and State mobile source control rules, including enhanced vehicle I/M on 25-year-old and newer cars and light trucks; a check for catalytic converter tampering and a gas cap pressure test on all subject vehicles; low-sulfur and low (7.0 pounds per square inch) RVP gasoline; Stage II gasoline refueling vapor recovery; the FMVCP, including Tier 1 and (beginning with 2004 models) Tier 2 tailpipe standards; the National Low Emission Vehicle program; and technician training and certification. The same temperature and humidity data, VMT fractions, and local vehicle age distribution used for the Post-1999 ROP Plan were used in the modeling. See Appendix A of the Post-1999 ROP Plan for further discussion of mobile source modeling.

Estimated Emissions

Table 2 gives the estimated summer day vehicle emissions in the Atlanta area for the years 1999 through 2004. The emission estimates do not include reductions attributable to the Partnership for a Smog-free Georgia, a voluntary mobile source emission reduction program, or from the TCMs incorporated into Georgia's approved 15 percent and 9 percent Plans.

The requirement to offset growth in emissions due to growth in VMT is satisfied by demonstrating no such growth will take place, *i.e.*, that emissions continued to decline through the attainment year of 2004.

TABLE 2.—ESTIMATED MOTOR VEHICLE EMISSIONS IN THE ATLANTA AREA

Year	VOC tons/day	NO _x tons/day
1999	211.86	378.65
2000	197.21	370.27
2001	192.16	359.65
2002	181.19	339.73
2003	171.50	320.40
2004	159.84	296.37

As shown in Table 2, estimated motor vehicle emissions of both VOC and NO_x decrease through the 2004 attainment year for the Atlanta severe ozone nonattainment area. This decrease of emissions occurs although VMT

increased. This analysis demonstrates that there is no need to adopt additional TCMs to meet the severe area ozone standard.

Conclusion

This SIP revision has addressed the requirement of Section 182(d)(1)(A) of the Act that severe ozone nonattainment areas submit a SIP revision that identifies whether it is necessary to adopt TCMs to offset growth in emissions attributable to growth in VMT. According to EPA's guidance for VMT SIPs, section III A(5)(d) of the General Preamble, if projected total motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied. For each year from 1999 to 2004, typical summer day highway mobile source emissions inventories were estimated for the Atlanta 13-county 1-hour ozone nonattainment area. These inventories, which reflect the most recent planning assumptions available and include all Federal and State mobile source control rules, demonstrate that motor vehicle emissions of both VOC and NO_x decreased each year, for a six-year period, through the 2004 attainment year for the Atlanta severe ozone nonattainment area. Therefore, per the Act and EPA policy as stated in the General Preamble, the adoption of TCMs are not required for Atlanta to demonstrate attainment of the one-hour NAAQS standard for ozone.

IV. Proposed Action

Today, EPA is proposing to approve the Georgia's Severe Area Vehicle Miles Traveled SIP for the Atlanta 1-Hour Ozone Nonattainment Area because the plan meets the requirements of the CAA.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a

significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: April 1, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05-7333 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[R05-OAR-2005-IN-0001; FRL-7894-9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to volatile organic compound (VOC) requirements for Transwheel Corporation (Transwheel) of Huntington County, Indiana. Transwheel owns and operates an aluminum wheel reprocessing plant at which it performs cold cleaner degreasing operations. On December 22, 2004, the Indiana Department of Environmental Management (IDEM) submitted a Commissioner's Order containing the revised requirements, and requested that EPA approve it as an amendment to the Indiana State Implementation Plan (SIP). The December 22, 2004, submission supplements a November 8, 2001, submission. IDEM is seeking EPA approval of an "equivalent control device" for Transwheel's degreasing operations, under 326 Indiana Administrative Code (IAC) 8-3-5 (a)(5)(C).

DATES: Written comments must be received on or before May 12, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2005-IN-0001 by one of the following methods:

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

Agency Website: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the

system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: mooney.john@epa.gov.

Fax: (312) 886-5824.

Mail: You may send written comments to: John Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05-OAR-2005-IN-0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME

index at <http://www.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Matt Rau at (312) 886-6524 before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524.

Rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information**

A. Does This Action Apply to Me?

B. What Should I Consider As I Prepare My Comments for EPA?

II. What Action Is EPA Taking Today?**III. Where Can I Find More Information**

About This Proposal and the

Corresponding Direct Final Rule?

I. General Information**A. Does This Action Apply to Me?**

This action applies to a single source, Transwheel Corporation in Huntington County, Indiana.

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

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

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

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

The EPA is proposing to approve revisions to Indiana's VOC SIP for Transwheel. The company has requested that it be permitted to use an oil cover as an equivalent control device for its cold cleaner degreaser, under 326 IAC 8-3-5(a)(5)(C). The oil cover is a layer of mineral oil several inches thick floating over the cleaning solvent in a dip tank. The solvent is a mixture of two water miscible compounds, NMP and MEA. The oil cover controls VOC emissions from the dip tank by reducing solvent evaporation.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. Please telephone Matt Rau at (312) 886-6524 before visiting the Region 5 Office.

Dated: March 1, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05-7328 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 2003-D082]

Defense Federal Acquisition Regulation Supplement; Uniform Contract Line Item Numbering

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing uniform line item numbering in DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D082, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D082 in the subject line of the message.

- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Debbie Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Tronic, (703) 602-0289.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Eliminate certain exceptions to requirements for uniform contract line item numbering at DFARS 204.7102, to promote standardization in contract writing; and

- Delete procedures for use and numbering of contract exhibits and attachments at DFARS 204.7105. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information, available at <http://www.acq.osd.mil/dpap/dars/pgi>.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to DoD administrative procedures for numbering of contract line items, exhibits, and attachments. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D082.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 204 as follows:

1. The authority citation for 48 CFR Part 204 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7102 is revised to read as follows:

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

- (1) Solicitations;
- (2) Solicitation line and subline item numbers;
- (3) Contracts as defined in FAR Subpart 2.1;
- (4) Contract line and subline item numbers;
- (5) Exhibits;
- (6) Exhibit line and subline items; and
- (7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

(1) The contract is an indefinite-delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(2) The contract is a communications service authorization issued by the Defense Information Systems Agency's Defense Information Technology Contracting Organization.

3. Section 204.7105 is revised to read as follows:

204.7105 Contract exhibits and attachments.

Follow the procedures at PGI 204.7105 for use and numbering of contract exhibits and attachments.

[FR Doc. 05-7082 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**48 CFR Part 204**

[DFARS Case 2003-D084]

Defense Federal Acquisition Regulation Supplement; Administrative Matters

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing administrative matters related to contract placement. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D084, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Defense Acquisition Regulations Web Site:* <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

○ *E-mail:* dfars@osd.mil. Include DFARS Case 2003-D084 in the subject line of the message.

○ *Fax:* (703) 602-0350.

○ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602-0326.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

○ Delete administrative procedures for DoD signature of contract documents at DFARS 204.101. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information, available at <http://www.acq.osd.mil/dpap/dars/pgi>.

○ Delete unnecessary cross-references at DFARS 204.402(1) and 204.902(b).

○ Delete text on security requirements and IRS reporting requirements at DFARS 204.402 and 204.904, respectively, as these requirements are adequately addressed in the FAR.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D084.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 204 as follows:

1. The authority citation for 48 CFR Part 204 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.101 is revised to read as follows:

204.101 Contracting officer's signature.

Follow the procedures at PGI 204.101 for signature of contract documents.

3. Section 204.402 is revised to read as follows:

204.402 General.

DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work products, both classified and unclassified.

204.902 [Amended]

4. Section 204.902 is amended in paragraph (b) by removing the parenthetical "(see 204.670)".

204.904 [Removed]

5. Section 204.904 is removed.

[FR Doc. 05-7083 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**48 CFR Parts 205, 226, and 252**

[DFARS Case 2003-D029]

Defense Federal Acquisition Regulation Supplement; Socioeconomic Programs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to socioeconomic considerations in DoD contracting. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D029, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D029 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Debbie Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Tronic, (703) 602-0289.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the

efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative.

The proposed changes—

- Delete text at DFARS 226.103 containing internal DoD procedures for funding of incentive payments to contractors under the clause at 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.
- Relocate text on contracting with historically black colleges and universities and minority institutions (HBCU/MI) from DFARS Subpart 226.70 to Subpart 226.3, for consistency with the location of FAR policy on this subject. The relocated text is substantially unchanged, but excludes information on HBCU/MI percentage goals and infrastructure assistance (presently at DFARS 226.7000 and 226.7002) that is considered unnecessary for inclusion in the DFARS.
- Delete DFARS Subpart 226.72, Base Closures and Realignment, as the text in this subpart unnecessarily duplicates text found elsewhere in the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5

U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 205, 226, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 205, 226, and 252 as follows:

1. The authority citation for 48 CFR Parts 205, 226, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS**205.207 [Amended]**

2. Section 205.207 is amended in paragraph (d)(i) introductory text by removing “226.7003” and adding in its place “226.370”.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

3. Section 226.103 is revised to read as follows:

226.103 Procedures.

Follow the procedures at PGI 226.103 when submitting a request for funding of an Indian incentive.

4. Subpart 226.3 is added to read as follows:

Subpart 226.3—Historically Black Colleges and Universities and Minority Institutions

Sec.

226.370 Contracting with historically black colleges and universities and minority institutions.

226.370-1 General.

226.370-2 Definitions.

226.370-3 Policy.

226.370-4 Set-aside criteria.

226.370-5 Set-aside procedures.

226.370-6 Eligibility for award.

226.370-7 Contesting a representation.

226.370-8 Goals and incentives for subcontracting with HBCU/MIs.

226.370-9 Solicitation provision and contract clause.

226.370 Contracting with historically black colleges and universities and minority institutions.**226.370-1 General.**

This section implements the historically black college and university (HBCU) and minority institution (MI) provisions of 10 U.S.C. 2323.

226.370-2 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside.

226.370-3 Policy.

DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goals for use of HBCUs and MIs.

226.370-4 Set-aside criteria.

Set aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

- (a) Offers will be submitted by at least two responsible HBCUs or MIs that can comply with the subcontracting limitations in the clause at FAR 52.219-14, Limitations on Subcontracting;
- (b) Award will be made at not more than 10 percent above fair market price; and
- (c) Scientific or technological talent consistent with the demands of the acquisition will be offered.

226.370-5 Set-aside procedures.

- (a) As a general rule, use competitive negotiation for HBCU/MI set-asides.
- (b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.
- (c) Follow the special synopsis instructions in 205.207(d). Interested HBCU/MIs must provide evidence of their capability to perform the contract, and a positive statement of their eligibility, within 15 days of publication of the synopsis in order for the acquisition to proceed as an HBCU/MI set-aside.
- (d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR Part 19) by more than 10 percent.

226.370-6 Eligibility for award.

- (a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—
 - (1) Be an HBCU or MI, as defined in the clause at 252.226-7000, Notice of

Historically Black College or University and Minority Institution Set-Aside, at the time of submission of its initial offer including price; and

- (2) Provide the contracting officer with evidence of its HBCU or MI status upon request.
- (b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at FAR 52.226-2, Historically Black College or University and Minority Institution Representation, unless—
 - (1) Another offeror challenges the status; or
 - (2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCU/MIs is published periodically by the Department of Education.)

226.370-7 Protesting a representation.

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.370-8 Goals and incentives for subcontracting with HBCU/MIs.

- (a) In reviewing subcontracting plans submitted under the clause at FAR 52.219-9, Small Business Subcontracting Plan, the contracting officer shall—
 - (1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal; and
 - (2) Consider whether subcontracts are contemplated that involve research or studies of the type normally performed by higher educational institutions.
- (b) The contracting officer may, when contracting by negotiation, use in solicitations and contracts a clause similar to the clause at FAR 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for HBCU/MIs. The clause should include a separate goal for HBCU/MIs.

226.370-9 Solicitation provision and contract clause.

- (a) Use the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set aside for HBCU/MIs.
- (b) Use the provision at FAR 52.226-2, Historically Black College or

University and Minority Institution Representation, in solicitations set aside for HBCU/MIs.

Subpart 226.70—[Removed and Reserved]

5. Subpart 226.70 is removed and reserved.

Subpart 226.72—[Removed]

6. Subpart 226.72 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**252.226-7000 [Amended]**

7. Section 252.226-7000 is amended in the introductory text by removing "226.7008" and adding in its place "226.370-9".

[FR Doc. 05-7092 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**48 CFR Parts 211, 223, and 252**

[DFARS Case 2003-D039]

Defense Federal Acquisition Regulation Supplement; Environment, Occupational Safety, and Drug-Free Workplace

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the environment, occupational safety, and a drug-free workplace. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D039, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D039 in the subject line of the message.
- Fax: (703) 602-0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Mr. Bill Sain, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, (703) 602-4245.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dp/dars/transf.htm>.

This proposed rule is a result of the DFARS Transformation Initiative. The proposed changes include—

○ Deletion of redundant or unnecessary text at DFARS 223.300, 223.302, 223.370-3(a), 223.570-1, and 223.570-3.

○ Deletion of text at DFARS 223.370-4 and 223.405 containing internal DoD procedures relating to safety precautions for ammunitions and explosives and use of recovered materials. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

○ Relocation of text on ozone-depleting substances, from DFARS Subpart 211.2 to Subpart 223.8, with retention of a cross-reference in Subpart 211.2.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule removes DFARS text that is unnecessary or internal to DoD, but makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D039.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 211, 223, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 211, 223, and 252 as follows:

1. The authority citation for 48 CFR Parts 211, 223, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. Section 211.271 is revised to read as follows:

211.271 Elimination of use of class I ozone-depleting substances.

See Subpart 223.8 for restrictions on contracting for ozone-depleting substances.

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

3. The heading of Part 223 is revised to read as set forth above.

223.300 [Removed]

4. Section 223.300 is removed.

5. Section 223.302 is revised to read as follows:

223.302 Policy.

(e) The contracting officer shall also provide hazard warning labels, that are received from apparent successful offerors, to the cognizant safety officer.

6. Section 223.370-3 is amended by revising paragraph (a) to read as follows:

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.

* * * * *

7. Section 223.370-4 is revised to read as follows:

223.370-4 Procedures.

Follow the procedures at PGI 223.370-4.

8. Section 223.405 is revised to read as follows:

223.405 Procedures.

Follow the procedures at PGI 223.405.

223.570-1 [Removed]

9. Section 223.570-1 is removed.

223.570-2 [Redesignated as 223.570-1]

10. Section 223.570-2 is redesignated as section 223.570-1.

223.570-3 [Removed]

11. Section 223.570-3 is removed.

223.570-4 [Redesignated as 223.570-2]

12. Section 223.570-4 is redesignated as section 223.570-2.

13. Section 223.803 is revised to read as follows:

223.803 Policy.

(1) *Contracts.* No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102-484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

(2) *Modifications.*

(i) Contracts awarded before June 1, 1993, with a value in excess of \$10 million, that are modified or extended (including option exercise) and, as a result of the modification or extension, will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(A) The evaluation must be carried out within 60 days after the first modification or extension.

(B) No further modification or extension may be made to the contract until the evaluation is complete.

(ii) If, as a result of this evaluation, it is determined that an economically feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(iii) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.223-7004 [Amended]

14. Section 252.223-7004 is amended in the introductory text by removing “223.570-4” and adding in its place “223.570-2”.

[FR Doc. 05-7093 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Part 213

[DFARS Case 2003-D059]

Defense Federal Acquisition Regulation Supplement; Use of the Governmentwide Commercial Purchase Card for Micro-Purchases

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for use of the Governmentwide commercial purchase card for actions at or below the micro-purchase threshold. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D059, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2003-D059 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed rule amends DoD policy for use of the Governmentwide commercial purchase card for actions at or below the micro-purchase threshold to—

- Lower the approval level for exceptions to the policy, from a general or flag officer or a member of the Senior Executive Service, to the chief of the contracting office; and
- Add a new blanket exception to the policy that applies if an authorized official renders the agency's or activity's purchase card program inactive.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a

substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to internal DoD review and approval requirements for exceptions to DoD policy for use of the Governmentwide commercial purchase card. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D059.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 213 as follows:

1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.270 is amended as follows:

- a. By revising paragraph (b);
- b. By redesignating paragraph (c) as paragraph (d); and
- c. By adding a new paragraph (c) to read as follows:

213.270 Use of the Governmentwide commercial purchase card.

* * * * *

(b)(1) The chief of the contracting office of the cardholder activity makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(2) To prevent mission delays, if an activity does not have a resident chief of the contracting office, delegation of this authority to the level of the senior local commander or director is permitted;

(c) An authorized official renders the agency's or activity's purchase card program inactive; or

* * * * *

[FR Doc. 05-7094 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 213 and 253

[DFARS Case 2003-D075]

Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing the use of simplified acquisition procedures. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D075, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2003-D075 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change

the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Update and consolidate text on the use of imprest funds and third-party drafts at DFARS 213.305;
- Delete unnecessary cross-references at DFARS 213.7001 and 213.7003-2; and

- Delete guidance on the use of unilateral contract modifications at DFARS 213.302-3, and delete procedures for use of forms at DFARS 213.307, 253.213, and 253.213-70. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information, available at <http://www.acq.osd.mil/dpap/dars/pgi>.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D075.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 213 and 253

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 213 and 253 as follows:

1. The authority citation for 48 CFR Parts 213 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.302-3 is amended by revising paragraph (2) to read as follows:

213.302-3 Obtaining contractor acceptance and modifying purchase orders.

* * * * *

(2) See PGI 213.302-3 for guidance on the use of unilateral modifications.

* * * * *

213.305-1 [Removed]

3. Section 213.305-1 is removed.

4. Section 213.305-3 is revised to read as follows:

213.305-3 Conditions for use.

(d)(i) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts. Use of imprest funds and third party drafts must comply with—

(A) DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and
(B) The Treasury Financial Manual, Volume I, Part 4, Chapter 3000.

(ii) Use of imprest funds requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), except as provided in paragraph (d)(iii) of this subsection.

(iii) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and
(B) Classified transactions.

5. Section 213.307 is revised to read as follows:

213.307 Forms.

See PGI 213.307 for procedures on use of forms for purchases made using simplified acquisition procedures.

213.7001 [Removed]

6. Section 213.7001 is removed.

213.7002 and 213.7003 [Redesignated]

7. Sections 213.7002 and 213.7003 are redesignated as 213.7001 and 213.7002, respectively.

8. Newly designated section 213.7002 is revised to read as follows:

213.7002 Purchase orders.

The contracting officer need not obtain a contractor's written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804-2(2).

213.7003-1 and 213.7003-2 [Removed]

9. Sections 213.7003-1 and 213.7003-2 are removed.

PART 253—FORMS

10. Section 253.213 is revised to read as follows:

253.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

(f) DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347; and OF 336, Continuation Sheet, instead of OF 348. Follow the procedures at PGI 253.213(f) for use of forms.

11. Section 253.213-70 is revised to read as follows:

253.213-70 Completion of DD Form 1155, Order for Supplies or Services.

Follow the procedures at PGI 253.213-70 for completion of DD Form 1155.

[FR Doc. 05-7095 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**48 CFR Parts 242 and 252**

[DFARS Case 2003-D023]

Defense Federal Acquisition Regulation Supplement; Contract Administration

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract administration and audit services. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D023, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2003-D023 in the subject line of the message.

- Fax: (703) 602-0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Debbie Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Tronic, (703) 602-0289.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative.

The proposed changes—

- Delete text that is unnecessary or duplicative of FAR policy in the areas of visits to contractor facilities; conduct of postaward conferences; review and negotiation of contractor costs and billing rates; use of contractor past performance information; and contractor internal controls.

- Delete text on providing contract administration services to foreign

governments and international organizations; coordination between corporate and individual administrative contracting officers; processing of contractor novation and change-of-name agreements; processing of voluntary refunds from contractors; and providing technical representatives at contractor facilities. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Update terminology at DFARS 242.202(a)(i)(D).

- Update the clause at DFARS 252.242-7004, Material Management and Accounting Systems, for consistency with the policy found at DFARS 242.7203(d)(5) regarding corrective action for a contractor's failure to make adequate progress in correcting system deficiencies.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D023.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 242 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 242 and 252 as follows:

1. The authority citation for 48 CFR Parts 242 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Section 242.002 is amended by revising paragraph (S-70)(iii) to read as follows:

242.002 Interagency agreements.

* * * * *

(S-70) * * *

(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Business Team. Contract administration offices provide services only upon request from the CCP. The CCP shall follow the procedures at PGI 242.002 (S-70)(iii).

3. Section 242.202 is amended by revising paragraph (a)(i)(D) to read as follows:

242.202 Assignment of contract administration.

(a)(i) * * *

(D) Management and professional support services;

* * * * *

Subpart 242.4—[Removed]

4. Subpart 242.4 is removed.

5. Section 242.503-2 is revised to read as follows:

242.503-2 Postaward conference procedure.

DD Form 1484, Post-Award Conference Record, may be used in conducting the conference and in preparing the conference report.

242.503-3, 242.570, and 242.704 [Removed]

6. Sections 242.503-3, 242.570, and 242.704 are removed.

7. Section 242.705-1 is revised to read as follows:

242.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.*

(1) The corporate administrative contracting officer (CACO) and individual administrative contracting officers (ACOs) shall jointly decide how to conduct negotiations. Follow the procedures at PGI 242.705-1(a)(1) when negotiations are conducted on a coordinated basis.

242.705-2 [Amended]

8. Section 242.705-2 is amended in paragraph (b)(2)(iii) by removing the last sentence.

242.705-3, 242.801, and 242.1202 [Removed]

9. Sections 242.705-3, 242.801, and 242.1202 are removed.

10. Section 242.1203 is revised to read as follows:

242.1203 Processing agreements.

The responsible contracting officer shall process and execute novation and change-of-name agreements in accordance with the procedures at PGI 242.1203.

Subpart 242.15—[Removed]

11. Subpart 242.15 is removed.

12. Section 242.7100 is revised to read as follows:

242.7100 General.

A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor that is not required by any contractual or other legal obligation. Follow the procedures at PGI 242.7100 for voluntary refunds.

242.7101 and 242.7102 [Removed]

13. Sections 242.7101 and 242.7102 are removed.

14. Sections 242.7400 and 242.7401 are revised to read as follows:

242.7400 General.

(a) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(b) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (*see* 201.602).

242.7401 Procedures.

When the program, project, or system manager determines that a technical representative is required, follow the procedures at PGI 242.7401.

242.7500 and 242.7501 [Removed]

15. Sections 242.7500 and 242.7501 are removed.

242.7502 and 242.7503 [Redesignated]

16. Sections 242.7502 and 242.7503 are redesignated as sections 242.7501 and 242.7502, respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.242-7000 [Removed and Reserved]

17. Section 252.242-7000 is removed and reserved.

18. Section 252.242-7004 is amended by revising the clause date and adding paragraph (d)(4) to read as follows:

252.242-7004 Material Management and Accounting System.

* * * * *

MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (XXX 2005)

* * * * *

(d) * * *

(4) If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

* * * * *

[FR Doc. 05-7090 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 244 and 252

[DFARS Case 2003-D025]

Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to subcontracts awarded under DoD contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 13, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D025, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: dfars@osd.mil. Include DFARS Case 2003–D025 in the subject line of the message.

- Fax: (703) 602–0350.

- Mail: Defense Acquisition Regulations Council, Attn: Ms. Debbie Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Tronic, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Revise DFARS 244.301 to clarify Government responsibilities for conducting reviews of contractor purchasing systems.
- Delete text at DFARS 244.304 containing examples of weaknesses in a contractor's purchasing system that may indicate the need for a review. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Update the clause at DFARS 252.244–7000 to reflect the current title

of the clause at FAR 52.244–6, Subcontracts for Commercial Items.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D025.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 244 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 244 and 252 as follows:

1. The authority citation for 48 CFR Parts 244 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

2. Section 244.301 is revised to read as follows:

244.301 Objective.

The administrative contracting officer (ACO) is solely responsible for initiating reviews of the contractor's purchasing systems, but other organizations may request that the ACO initiate such reviews.

3. Section 244.304 is revised to read as follows:

244.304 Surveillance.

- (b) The ACO, or the purchasing system analyst (PSA) with the concurrence of the ACO, may initiate a special review of specific weaknesses in

the contractor's purchasing system. See PGI 244.304(b) for examples of weaknesses.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.244–7000 [Amended]

4. Section 252.244–7000 is amended as follows:

- a. By revising the clause date to read “(XXX 2005)”; and

- b. In the introductory text of the clause by removing the phrase “and Commercial Components”.

[FR Doc. 05–7091 Filed 4–11–05; 8:45 am]

BILLING CODE 5001–08–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR 2005–G501]

RIN 3090–A106

General Services Acquisition Regulation; Federal Agency Retail Pharmacy Program

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to add a new subpart and clause required by the Department of Veterans Affairs (VA), consistent with Congressional intent under Section 603 of the Veterans Health Care Act of 1992 (VHCA) that certain Federal agencies (*i.e.*, VA, Department of Defense (DoD), Public Health Service (including the Indian Health Service), and the Coast Guard) have access to Federal pricing for pharmaceuticals purchased for their beneficiaries.

GSA is responsible for the schedules program and rules related to its operation. Under GSA's delegation of authority, the VA procures medical supplies under the VA Federal Supply Schedule program. VA and DoD seek this amendment. This new subpart adds a clause unique to the virtual depot system established by a Federal Agency Retail Pharmacy Program utilizing contracted retail pharmacies as part of a centralized pharmaceutical commodity management program. At this time, only DoD has a program in place, and the rule would facilitate DoD's access to Federal pricing offered on Federal Supply Schedule (FSS) pharmaceutical

contracts for covered drugs purchased by DoD and dispensed to TRICARE beneficiaries through retail pharmacies in the TRICARE network.

DATES: Interested parties should submit comments in writing on or before June 13, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR case 2005–G501 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acqnet.gov/GSAM/gsamproposed.html>. Click on the GSAR case number to submit comments.
- E-mail: gsarcase.2005-G501@gsa.gov. Include GSAR case 2005–G501 in the subject line of the message.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR case 2005–G501 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall at (202) 219–0986, or by e-mail at kimberly.marshall@gsa.gov. Please cite GSAR case 2005–G501.

SUPPLEMENTARY INFORMATION:

A. Introduction

Under the General Services Administration (GSA) Schedules (also referred to as Multiple Award Schedules and Federal Supply Schedules) Program, 41 U.S.C. 259(b) and 40 U.S.C. 501, GSA establishes long-term Governmentwide contracts with commercial firms to provide access to over four million commercial services and products that can be ordered directly from GSA Schedule contractors or through the GSA *Advantage!*TM online shopping and ordering system.

GSA Schedules offer customers direct delivery of millions of state-of-the-art, high-quality commercial services and products at volume discount pricing. All customers, even those in remote locations, can order the latest

technology and quality services and products, conveniently, and at most-favored customer prices. GSA Schedules also offer the potential benefits of shorter lead-times, lower administrative costs, and reduced inventories. When using GSA Schedules, ordering activities have the opportunity to meet small business goals, while promoting compliance with various environmental and socioeconomic laws and regulations.

The General Services Administration has delegated the responsibility for certain Federal Supply Schedules to the Department of Veterans Affairs (VA). This includes Federal Supply Classification (FSC) Group 65, which includes pharmaceuticals and drugs. Federal agencies and certain other organizations are eligible to purchase pharmaceuticals and drugs from VA supply schedules.

B. Background

1. *The Federal Agency Retail Pharmacy Program Supply Schedule clause.* These changes will allow VA to revise its schedule contracts to accommodate the ordering needs of Federal agencies, *i.e.* DOD, VA, the Public Health Service (including the Indian Health Service), and the Coast Guard, pursuant to 38 U.S.C. 8126, through virtual depot systems. These depot systems will use contracted retail pharmacies as part of the centralized pharmaceutical commodity management program. DoD's TRICARE Retail Pharmacy Program is the first such virtual depot system and will be the prototype for future systems. This rule will allow Federal agencies to take advantage of FSS pricing and receive a refund, where appropriate, from drug manufacturers for sales to those agencies through the retail pharmacy network virtual depot system, for their beneficiaries.

In general, Federal pricing of pharmaceuticals refers to discounts (Federal Ceiling Prices (FCPs)) available from manufacturers under Section 603 of the Veterans Health Care Act (VHCA) of 1992 (38 U.S.C. 8126), and Federal Supply Schedule (FSS) prices under the VA Federal Supply Schedule program. The VHCA requires drug manufacturers to enter into a Master Agreement with VA under which a Pharmaceutical Pricing Agreement is executed establishing a discount for covered drugs obtained by VA, DoD, the Public Health Service (including the Indian Health Service), and the Coast Guard purchased by these Federal agencies under depot contracting systems or listed on the FSS. Specifically, this rule adds a new subpart to the GSAR on

Federal Agency Retail Pharmacy Program (subpart 538.XX) and a new clause, Federal Agency Retail Pharmacy Program Supply Schedule (GSAR 552.238–XX) for those Federal Agency Retail Pharmacy Programs determined by the VA Secretary to qualify as a “depot” contracting system as set forth in 38 U.S.C. 8126.

This rulemaking assists the ongoing reengineering of the TRICARE Pharmacy Benefits Program (TPBP), consistent with the Congressional actions and DoD's prior rulemaking described below. This rulemaking is consistent with the authority provided by 38 U.S.C. 8126 to acquire drugs at the statutorily provided discount through use of a depot contracting system.

Pursuant to the Federal Agency Retail Pharmacy Program clause, the drugs for beneficiaries will be deemed to be ordered by the Federal agencies through the FSS contract solely for the purposes of pricing, delivery, and scope of coverage, but does not confer rights for any other purpose. The Federal agencies will obtain refunds on covered drugs purchased through the retail pharmacy network by those agencies and dispensed to beneficiaries. The drug manufacturer will base the refund on the difference between a benchmark price, consisting of either the manufacturer's actual sales price to the wholesaler or retail pharmacy chain when known and auditable or non-FAMP (non-Federal average manufacturer price) and the Federal Supply Schedule price (the Federal Ceiling Price or FSS negotiated price, whichever is lower).

The Federal Agency Retail Pharmacy Program Supply Schedule clause in this rule refers to a VA clause, “Industrial Funding Fee and Sales Reporting (JUL 2003)(Variation)”. This clause is available at the following website: <http://www.va.gov/oamm/nac/fsss/>.

2. *The TRICARE Pharmacy Benefits Program (TPBP) of the Department of Defense.* This rule is required by DoD in order to reengineer its TRICARE Pharmacy Benefits Program. DoD is directed by statute (title 10, United States Code, chapter 55) to provide an improved and uniform health care benefits program in order to create and maintain high morale in the uniformed services. TRICARE is DoD's comprehensive health care program for over 9.3 million beneficiaries—active duty Service members and their families, as well as retirees and their families and survivors—and includes a robust pharmacy benefit that gives beneficiaries the option of obtaining drugs from military treatment facilities, by mail order, or through retail

pharmacies. The TRICARE pharmacy website is at <http://www.tricare.osd.mil/pharmacy/>. The TRICARE Pharmacy Benefits Program uses the VA supply schedules, among other vehicles.

Section 703 of the National Defense Authorization Act for FY 1999 (Public Law 105-261) required the Secretary of Defense to plan a "system-wide redesign of the military and contractor retail and mail-order pharmacy system of the Department of Defense by incorporating 'best business practices' of the private sector." In addition, section 701 of the FY 2000 National Defense Authorization Act (Public Law 106-65) enacted 10 U.S.C. 1074g, which directed the Secretary to "establish an effective, efficient, integrated pharmacy benefits program."

DoD has reengineered the TPBP to meet these Congressional requirements. The redesign of the TPBP was the subject of public rulemaking (see 69 FR 17035, April 1, 2004) and is codified at 32 CFR Section 199.21.

One key goal of the reengineering effort is to extend Federal pricing of pharmaceuticals to prescriptions filled for TRICARE beneficiaries by retail pharmacies in the TRICARE network. DoD has taken advantage of the statutory pricing authority with respect to drugs purchased and dispensed through the TRICARE mail order pharmacy program and military hospitals. DoD is now in a position to extend Federal pricing to the TRICARE retail pharmacy network. As a result of reengineering, DoD is able to link DoD's drug purchases from network pharmacies to the manufacturer of the purchased drug, including those manufacturers with FSS contracts.

In particular, the redesigned TPBP leverages new technology to create a centralized commodity management system as required under the VHCA for a depot contracting system. As previously stated, the VHCA requires drug manufacturers to enter into a Master Agreement with VA under which a Pharmaceutical Pricing Agreement is executed establishing a discount for covered drugs purchased by VA, DoD, the Public Health Service (including the Indian Health Service), and the Coast Guard under depot contracting systems or listed on the FSS. All drug manufacturers that signed a Master Agreement and Pharmaceutical Pricing Agreement with VA were advised by letter signed by the Acting Executive Director, VA National Acquisition Center, dated October 14, 2004 (which letter is hereby incorporated by reference), that the VA Secretary had determined that DoD's TRICARE Retail Pharmacy Program was

a centralized pharmaceutical commodity management system that met the definition of "depot" contracting system as set forth in 38 U.S.C. 8126. While that letter authorized DoD to obtain Federal Ceiling Prices for drugs purchased through the TRICARE retail pharmacy network after September 30, 2004, this rule will extend FSS pricing to such drugs.

Pursuant to the terms of a contract awarded by DoD, a commercial pharmacy benefits manager (PBM) will provide a retail pharmacy network for the DoD TRICARE Management Activity. The PBM will issue payment with Government funds for prescriptions dispensed by retail network pharmacies to TRICARE beneficiaries. DoD will provide manufacturers with itemized data on covered drugs purchased through TRICARE retail network pharmacies in order to obtain appropriate refunds on covered drugs delivered to TRICARE beneficiaries.

DoD will use the reporting and audit capabilities of the Pharmacy Data Transaction Service (PDTs) to verify beneficiary eligibility, authorize prescription payments, and validate the refund owed to the Government.

The PBM contractor has no role in DoD's process for obtaining refunds based on FSS prices (whether Federal Ceiling Prices or negotiated lower FSS prices) already established by VA. Nor is DoD's payment to the PBM contractor related, either directly or indirectly, to Federal pricing of pharmaceuticals dispensed to TRICARE beneficiaries by network pharmacies.

Congress has anticipated the extension of Federal pricing to the redesigned TPBP. In the Defense Appropriations Act for FY 2005 (Public Law 108-287), Congress decreased the funding in the Defense Health Program account to reflect savings generated from the application of Federal pricing to the TRICARE pharmacy program. In addition, Senate Report No. 108-260, accompanying the proposed National Defense Authorization Act for Fiscal Year 2005, S. 2400, reiterates an expectation for savings and recommends further decreases to TRICARE program funding. The report (page 313) states:

The budget request reflected \$172.0 million in savings related to the use of federal pricing for retail pharmaceuticals in fiscal year 2005. The committee understands that the funding in the defense health program request did not reflect anticipated savings for retail pharmaceuticals beginning in June 2004, when federal pricing authorized by the Secretary of Veterans Affairs under title 38, United States Code, is applied in a new retail pharmacy program.

Accordingly, the committee recommends a decrease of \$44 million in the defense health program account.

It should be noted that the effective date in the aforementioned committee report has been extended to October 1, 2004.

3. The Department of Veterans Affairs. The General Services Administration is promulgating this rule also to assist efforts by the Department of Veterans Affairs to provide medical care and associated services to veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF), as well as to provide more efficient access to newly written prescriptions for veterans currently receiving medical care at locations where VA pharmacy services are not immediately available. Such venues primarily include Community Based Outpatient Clinics (CBOCs). As is the current practice, refills would be handled at VA's consolidated mail outpatient pharmacies (CMOPs).

As some portion of OIF and OEF veterans will be returning from combat areas to their homes in locations where VA pharmacy services are not immediately available, VA is currently contemplating how to meet the needs of these returning soldiers for timely, high-quality and cost-effective prescription services. Based upon the July 29, 2004, VHA report, "Analysis of VA Health Care Utilization Among Veterans of Operation Iraqi Freedom and Operation Enduring Freedom", approximately 27,571 (16 percent) of the 168,528 separated OIF veterans and 5,113 (11 percent) of the 45,880 separated OEF veterans identified by VA based on data provided by DoD, have sought VA health care since they were deployed. VA believes that contractual arrangements whereby VA pays for new prescriptions at Federal prices in community settings will allow VA to meet its obligations to its existing patients, as well as newly enrolled OIF and OEF beneficiaries, in a cost-effective and timely manner.

In the future, it is likely that VA will make use of this rule to provide prescription services to beneficiaries authorized to receive services under one or more of the following programs: VA's CHAMPVA, VA Fee Program, Spina Bifida Health Care Program, Children of Women Vietnam Veterans Program, or other contracted medical care programs. While VA does not currently have contractual arrangements in place to immediately take advantage of this rule, it is actively engaged in the preparatory work to solicit for such contracts.

CHAMPVA

CHAMPVA is a health care benefits program for—

- Dependents of veterans who have been rated by the VA as having a total and permanent disability;
- Survivors of veterans who died from VA-rated service-connected conditions, or, who at the time of death, were rated permanently and totally disabled from a VA-rated service-connected condition; and
- Survivors of persons who died in the line of duty and not due to misconduct and not otherwise entitled to benefits under DoD's TRICARE program.

Under CHAMPVA, VA shares the cost of covered health care services and supplies with eligible beneficiaries. As is the current practice, patients would continue to have a choice to refill their medications through the VA CMOP under the Made-by-Mail program. For fiscal year 2004 (FY 04), there were 234,000 beneficiaries enrolled and 149,400 unique users for the CHAMPVA program.

VA Fee Program

The VA Fee program provides authorization for certain veterans to receive community-based medical care, hospital care, home care, nursing home care, and services when VA facilities are not available. Fee care is governed by 38 U.S.C. 1703, 38 U.S.C. 1725, and 38 U.S.C. 1728. Approved services are generally paid on a fee-for-service or contract schedule. Authorization may be for brief or long-term episodes of care.

Spina Bifida Health Care Program

Spina Bifida Health Care Program provides benefits to Vietnam veterans' birth children diagnosed with spina bifida and who are in receipt of a VA regional office award for spina bifida benefits. Under this program, VA assumes financial responsibility for medical service and supplies related to the treatment of spina bifida, including complications and associated conditions, excluding spina bifida occulta. Spina bifida beneficiaries are not responsible for a cost share. In FY 04, there were 1,164 beneficiaries enrolled and 689 unique users for the Spina Bifida Health Care program.

Children of Women Vietnam Veterans Program

Children of Women Vietnam Veterans (CWVV) program provides benefits for women Vietnam veterans' birth children diagnosed with one or more covered birth defects as determined by the Denver VA regional office. Under this program, VA assumes financial responsibility for medical services and

supplies related to the treatment of the covered birth defects, including complications and associated conditions. CWVV beneficiaries are not responsible for a cost share. In FY 04, there were eight beneficiaries enrolled and no unique users for the CWVV program.

4. *The U.S. Public Health Service (including the Indian Health Service).* Although the U.S. Public Health Service/Indian Health Service do not have current plans to establish a Federal Agency Retail Pharmacy program, if and when the VA Secretary determines that such a program initiated by these agencies qualifies as a "depot" contracting system as set forth in 38 U.S.C. 8126, this rule would apply to that program.

C. Executive Order 12866

We have examined the impacts of the proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. This proposed rule is considered a significant regulatory action under the Executive order.

D. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$115 million, using the implicit GDP deflator for 2003, the most recent year for which final data exist. This proposed rule does not contain such a mandate.

E. Congressional Review Act

The Congressional Review Act (5 U.S.C. 804) requires that regulations that have been identified as being major must be submitted to Congress before taking effect. If implemented as proposed, this rule is not a major rule under the Congressional Review Act.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rulemaking assists VA's efforts to revise its schedule to accommodate the ordering needs of Federal agencies, i.e., DoD, VA, the Public Health Service (including the Indian Health Service), and the Coast Guard, pursuant to 38 U.S.C. 8126, through virtual depot systems. At this time, only DoD has a program in place, TRICARE Retail Pharmacy Program, that is designed to work through a virtual depot system. The Coast Guard utilizes the TRICARE Retail Pharmacy Program and, thus, is included in the DoD TRICARE Retail Pharmacy Initial Regulatory Flexibility Analysis discussion below.

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. However, this appears to be very unlikely. The Initial Regulatory Flexibility Analysis is as follows:

Initial Regulatory Flexibility Analysis, GSAR Case 2005–G501, Federal Agency Retail Pharmacy Program

This Initial Regulatory Flexibility Analysis has been prepared in accordance with Section 603, Title 5, of the United States Code.

1. *Description of the reasons why action by the agency is being considered.* This rule amends the General Services Acquisition Regulation (GSAR) to add a new subpart and clause to complement ongoing efforts by the Department of Defense (DoD) to reengineer its TRICARE Retail Pharmacy Benefits Program, and the Department of Veterans Affairs' (VA) plans to create a similar program. This is consistent with Congressional intent under Section 603 of the Veterans Health Care Act of 1992 (VHCA) that certain Federal agencies (i.e., VA, DoD, Public Health Service (including the Indian Health Service), and the Coast Guard) have access to Federal pricing for pharmaceuticals purchased for their beneficiaries.

2. *Succinct statement of the objectives of, and legal basis for, the rule.* Section 603 of the VHCA requires that certain Federal agencies (i.e., VA, DoD, Public Health Service (including the Indian Health Service), and the Coast Guard) have access to Federal pricing for pharmaceuticals purchased for their beneficiaries. This rule would facilitate DoD's access to Federal pricing offered on Federal Supply Schedule (FSS) pharmaceutical contracts for covered drugs purchased by DoD and dispensed to TRICARE beneficiaries through retail pharmacies in the TRICARE network. It would also facilitate access to the same Federal pricing for retail network pharmacy programs instituted by the other agencies named in section 603. GSA has overall responsibility for the schedules program and

rules related to its operation and have empowered VA, under a GSA delegation of authority, to procure medical supplies under the VA Federal Supply Schedule program. VA and DoD both seek this amendment to the GSAR.

3. *Description of and, where feasible, estimate of the number of small entities to which the rule will apply.* The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, but this appears to be very unlikely because of the research conducted (queries of the Central Contractor Registration system database, as well as information provided directly by DoD and VA officials).

It is estimated that the rule will apply to approximately two dozen small businesses as a result of these changes. It should be noted that more than half of these businesses have annual gross sales exceeding \$20 million, thus comparing very favorably with their large business counterparts. Further, the high gross sales figures of the small businesses in the pharmaceutical industry indicates the reporting of sales and the payment of refunds to the Federal agencies named in section 603 will have little significant impact on them.

Since subcontractors are not required to be registered in CCR, the total number of small businesses positively impacted may be greater than this; but not significantly so, since subcontracting is not common in the production of pharmaceuticals.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.* The rule will impose a new three-step reporting/recordkeeping requirement on *all* entities that hold VA Federal Supply Schedule contracts (for FSC Group 65, which includes covered pharmaceuticals and drugs), including small entities. The first step is the reporting of VA schedule sales of covered drugs (under section 603) under the TRICARE and other Federal agency retail pharmacy programs. The second step is the calculation and the payment of the refunds owed to DoD and other named Federal agencies with similar programs. The third step is the calculation and payment of the industrial funding fee owed to VA. This paperwork justification covers the calculation of the refunds owed to DoD. The types of professional skills necessary for the reporting/recordkeeping and processing of payment is very minimal—predominately spreadsheet and database operational skills which are both essentially clerical. The recordkeeping and processing of payment transactions can both be accomplished electronically, so the effort to be expended on this is minimal.

5. *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the rule.* This rule is to assist DoD in the final phase of implementing the following: Section 703 of the National Defense Authorization Act for FY 1999 (Public Law 105-261) which

required the Secretary of Defense to plan a system-wide redesign of the military and contractor retail and mail-order pharmacy system of the Department; and Section 701 of the FY 2000 National Defense Authorization Act (Public Law 106-65) enacted 10 U.S.C. 1074g, which directed the Secretary to establish an effective, efficient, integrated pharmacy benefits program. This rule also facilitates access to the same Federal pricing for retail network pharmacy programs instituted by other agencies under section 603. There are no other known Federal rules which may duplicate, overlap, or conflict with this rule.

6. *Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.* There are no known alternatives to accomplish the stated objectives to assist DoD's reengineered TRICARE Retail Pharmacy Benefits Program and VA's planned retail pharmacy program, which would further lessen any significant economic impact of the rule on small entities. As stated previously, the economic impact is deemed to be minimal.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils will consider comments from small entities concerning the affected GSAR Parts 538 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (GSAR case 2005-G501), in correspondence.

G. Paperwork Reduction Act

This rulemaking assists VA's efforts to revise its schedule to accommodate the ordering needs of Federal agencies, *i.e.*, DoD, VA, the Public Health Service (including the Indian Health Service), and the Coast Guard, pursuant to 38 U.S.C. 8126, through virtual depot systems. At this time only DoD has a program in place, TRICARE Retail Pharmacy Program that is designed to work through a virtual depot system. The Coast Guard utilizes the TRICARE Retail Pharmacy Program; and, thus, is included in the DoD TRICARE Retail Pharmacy Paperwork Burden discussion below.

The discussion of information collection activities below applies to the DoD TRICARE program. It is expected that other eligible agencies will request additional collections of information specific to their respective programs. At such time eligible agencies will request OMB numbers for prospective collections and seek public comment.

Summary of Collection of Information: DoD is revising the information collection requirements under current OMB control number

0720-0032. Specifically, under the revised collection of information, respondents (drug manufacturers) will base refund calculation reporting requirements on both the Federal Ceiling Price and the Federal Supply Schedule Price, whichever is lower. Prior to this rulemaking, drug manufacturers' reporting requirements addressed only the Federal Ceiling Price.

Proposed Use of Information: DoD will use the reporting and audit capabilities of the Pharmacy Data Transaction Service (PDTs) to validate refunds owed to the Government.

Annual Reporting Burden: Public reporting burden for this collection of information is estimated to average 8 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 annual reporting burden is estimated as follows:

Respondents: There are approximately 300 drug manufacturers responding to this collection.

Responses per respondent: 4

Total annual responses: 1,200

Preparation hours per response: 8

Total response burden hours: 9,600

H. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 13, 2005 to: DoD Health Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405, and a copy to Colonel James Young, or Major Travis Watson, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206 (703 681-0039).

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DoD, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the Colonel James Young or Major Travis Watson, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206 (703 681-0039). Please cite OMB Control Number 0720-0032, GSAR case 2005-G501, Federal Agency Retail Pharmacy Program, in all correspondence.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Dated: April 6, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Therefore, GSA proposes amending 48 CFR parts 538 and 552 as set forth below:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

2. Add Subpart 538.XX, consisting of sections 538.XX01 and 538.XX02, to read as follows:

Sec.

538.XX01 Scope.

538.XX02 Contract clause.

Subpart 538-XX—Federal Agency Retail Pharmacy Program

538.XX01 Scope.

This subpart prescribes a clause that applies to a retail pharmacy program of any of the Federal agencies covered by Section 603 of the Veterans Health Care Act (VHCA) of 1992, Public Law 102-585 (38 U.S.C. 8126). As described in 38 U.S.C. 8126(b), the Federal agencies include the Department of Veterans Affairs (VA), Department of Defense (DoD), Public Health Service (including the Indian Health Service), and the Coast Guard.

538.XX02 Contract clause.

The contracting officer shall insert the clause at 552.238-XX, Federal Agency Retail Pharmacy Program Supply Schedule, in solicitation and schedule contracts for Schedule 65, Part I, Section B, to apply only to orders for a Retail Pharmacy Program of the Department of Veterans Affairs, Department of Defense, Public Health Service (including the Indian Health Service), and the Coast Guard.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 552.238-XX to read as follows:

552.238-XX Federal Agency Retail Pharmacy Program Supply Schedule.

As prescribed in 538.XX02, insert the following clause:

FEDERAL AGENCY RETAIL PHARMACY PROGRAM SUPPLY SCHEDULE (DATE)

(a) This clause applies only to a Federal Agency Retail Pharmacy Program administered by one of the Federal agencies described in Section 603 of the Veterans Health Care Act (VHCA) of 1992 (38 U.S.C. 8126). When this clause applies, the FAR clauses 52.216-18, 52.216-19, GSAR clause 552.232-74, and FSS clauses I-FSS-103, and F-FSS-202-G do not apply.

(b) The Federal Agency Retail Pharmacy Program procedures, including pricing procedures, and those in this clause, are consistent with 38 U.S.C. 8126. The Federal agency enters into contracts with a commercial pharmacy benefits manager to provide a retail pharmacy network. The pharmacy benefits manager will issue payment with Government funds to the retail pharmacy for prescriptions dispensed to the Federal agency beneficiaries. The Federal agency will provide to FSS contractors itemized data on covered drugs procured through the agency's retail network pharmacies, in order to obtain appropriate refunds on covered drugs delivered to the Federal agency's beneficiaries and subject to Federal pricing. The drugs will be deemed to have been ordered by the Federal agency through the FSS contract, for the purposes of establishing price, delivery, and scope of coverage, but does not confer rights for any other purpose. The Federal agency will obtain refunds on covered drugs from FSS contractors based on the difference between a benchmark price, consisting of either the manufacturer's actual sales price to the wholesaler or retail pharmacy chain when known and auditable or non-FAMP (non-Federal average manufacturer price), and the Federal Supply Schedule price (the Federal Ceiling Price or FSS negotiated price, whichever is lower).

(c) *Ordering.* (1) All Federal agency network retail pharmacy prescription orders for covered drugs are subject to the terms and conditions of this contract. In the event of conflict between a prescription order and this contract, the contract shall control.

(2) A Federal agency's instruction to its contracted or subcontracted retail pharmacy to fill a prescription for a health care beneficiary of the agency, under its virtual depot system for centralized pharmaceutical management, shall be deemed to be an order placed against this contract.

(d) *Invoice payments.* The time and method of payments to the Contractor for FSS items deemed (for the purposes of establishing price, delivery, and scope of coverage) to have been ordered by a Federal agency through its contracted or subcontracted retail pharmacies will be

determined according to commercial agreements between the FSS Contractor and such pharmacies or their authorized Pharmaceutical Prime Vendors.

(e) *Scope of contract worldwide.* (1) This solicitation is issued to establish contracts which may be used as sources of supplies or services described herein for domestic and/or overseas delivery.

(2) *Definition. Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

(3) Contractor will provide domestic delivery only for Federal agency retail pharmacy orders.

(4) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government. Federal beneficiary prescriptions for FSS-listed covered drugs that are filled through a Federal agency's directly contracted or indirectly subcontracted retail pharmacy, under the agency's virtual depot system for centralized pharmaceutical commodity management, will be deemed to constitute Executive branch orders, solely for the purposes of establishing pricing, delivery, and scope of coverage, but does not confer rights for any other purpose.

(f) *Delivery prices.* Prices offered must cover delivery of FSS covered drugs to all Federal agency contracted or subcontracted retail pharmacies (or to their authorized PPVs) for use in filling prescriptions for such agencies' beneficiaries, as part of the agencies' virtual depot system for centralized pharmaceutical commodity management.

(g) *Electronic Commerce.* A Federal Agency Retail Pharmacy Program will require a Contractor to receive and process refund requests submitted according to the following procedures:

(1) On the 15th of the month following the end of each calendar year quarter, the Federal Agency Pharmacy Benefits Office (PBO) will generate and submit to each pharmaceutical manufacturer a Utilization Flat File Layout Report for their products procured during the prior quarter, based on National Council for Prescription Drug Programs (NCPDP) Standards Version 03 Release 02 (or most current version).

(i) The 15th was selected to enable reversals to clear within the 10-day hold period.

(ii) NCPDP represents industry standards.

(iii) The Federal agency, VA, and industry (as a whole) will establish an interface control document for the transmission and file layout, to include the population of optional and conditional data elements for standardization for all of industry.

(iv) Separate reports will be generated for purchases paid from the Department of Defense's (DoD's) Accrual Fund and DHP account.

(2) Within the Utilization Flat File Detail Record (UD), the product code identifier will be used by the Contractor to sum (grand metric quantity) the total metric decimal quantity of individual records of each product purchased by the Government

through individual Federal agency retail network pharmacies. The grand metric quantity for each product will then be rounded down to the nearest package size based on the product code identifier to yield the total number of units procured by the Federal agency.

(i) The National Drug Code (NDC) number will be used to populate the product code identifier. The NDC should correlate to the actual product dispensed by the pharmacy, based on commercial best practice and data integrity requirements demanded by health plans and other insurers.

(ii) The Federal agency's Office of Program Integrity will be notified of any pharmacies identified (by Government, industry, or other means) as submitting fraudulent NDCs.

(iii) NDCs assigned by product repackagers will only be included in the reports when the repackager NDC can be correlated to the NDC of the originating product.

(3) Contractor Refund and Reporting Schedule.

(i) The Contractor shall complete refund calculations not later than 60 days following the date of the quarterly UD Report.

(ii) The Contractor shall make refund payments so that such payments are received by DoD not later than 70 days following the date of the quarterly UD Report. At the time of refund payment, the Contractor shall also send to the Federal Agency's Pharmacy Benefits Office (PBO) a Reconciliation Report corresponding to the quarterly UD Report and resulting refund payment.

(h) Resolution of Refund Data Disagreements.

(1) If the Contractor disagrees with the Federal agency data in the quarterly refund request under paragraph (g) of this clause, the Contractor shall provide prompt written notice to the PBO. Such notice shall be received by the PBO no later than 10 business days after the Contractor's discovery of the alleged error, but in no event no later than one year after the date of the quarterly report containing the alleged erroneous data. The notice shall include specific identification of the alleged error(s) and the specific reason(s) the Contractor believes the data to be in error, along with all available documentation that supports the Contractor's allegation(s).

(2) The Federal agency's PBO will initiate a prompt review of the data following receipt of the notice and documentation provided by the Contractor. The parties agree to use their best good faith efforts to resolve any disagreement within 60 days of the PBO's receipt of the Contractor's written notice. During this period, the Contractor shall proceed diligently with performance of this contract and will exhaust administrative remedies under this clause prior to filing a dispute under the Disputes clause incorporated into this contract. Performance includes remittance of any refund due the Federal agency based upon the data provided by the PBO with which the Contractor disagrees. If the written notice of disagreement is resolved in favor of the Contractor, the Federal agency shall reimburse the Contractor the amount of remitted refund attributed to the error and simple interest on the reimbursed amount at the rate determined in accordance with the

Contract Disputes Act of 1978, as amended (41 U.S.C. 601-603), from the date of receipt of the Contractor's remittance of the refund in disagreement.

(3) If the Federal agency and the Contractor cannot resolve the disagreement within 60 days following receipt of the Contractor's written notice (and any time extensions mutually agreed to by the parties), the Contractor shall have exhausted administrative remedies under this clause and may proceed with disputes remedies available under the Disputes clause and the Contract Disputes Act of 1978, as amended.

(i) **Industrial Funding Fee and Sales Reporting.** The Contractor shall report all contract sales covered by this clause and pay the Industrial Funding Fee (IFF) included therein, as required by VA's variation of clause 552.238-74 of the contract, "Industrial Funding Fee and Sales Reporting (JUL 2003) (Variation)". All sales of covered drugs made through retail pharmacies under this clause are deemed to be reportable when the Contractor receives the quarterly Utilization Flat File Layout Report(s) (or its functional substitute), applies the appropriate FSS contract price (including IFF) to the rounded total number of units of each covered product purchased by the submitting agency (as shown on the Flat File Report), and computes the total dollar sales of each product. These sales are counted as FSS sales on the date the computations are finished (for example, the results of computations finished on March 10 are reported 60 days after the end of the first calendar quarter, on May 30). The grand total of all retail pharmacy sales (at the appropriate FSS contract prices) under this clause computed during a calendar quarter shall be included in the Contractor's quarterly sales report to VA. That information and the resultant IFF shall be provided to VA according to the timelines and procedures established in 552.238-74.

(End of clause)

[FR Doc. 05-7270 Filed 4-11-04; 8:45 am]

BILLING CODE 6820-61-S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 546 and 552

[GSAR ANPR 2005-N01]

General Services Administration Acquisition Regulation; Waiver of Consequential Damages and "Post Award" Audit Provisions (Correction)

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA)

ACTION: Correction to advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The General Services Administration (GSA) is requesting comments from both Government and industry on whether the General Services Administration Acquisition Regulation (GSAR) should be revised to

include a waiver of consequential damages for contracts awarded for commercial items under the FAR. GSA is also requesting comments on whether "post award" audit provisions should be included in its Multiple Award Schedules (MAS) contracts and Governmentwide acquisition contracts (GWACs). GSA is further amending the correction notice published in the **Federal Register** at 70 FR 13005, March 17, 2005, to add the following: In addition, GSA is interested in receiving comments on whether the Examination of Records clause at GSAR 552.215-71 should be modified to reinstate post-award access to and the right to examine records to verify that preaward/ modification pricing, sales, or other data related to the supplies or services offered under a contract which formed the basis for an award/modification was accurate, current, and complete. The notice published in the **Federal Register** at 70 FR 12167, March 11, 2005, is amended to extend the public comment date to May 10, 2005, and to allow interested parties to submit presentations by April 7, 2005.

DATES: Comment Date: Interested parties should submit comments on or before May 10, 2005, to be considered in the formulation of a proposed rulemaking.

Public Meeting Presentation Date: Interested parties may register and submit presentations by April 7, 2005.

ADDRESSES: Submit written comments to:

General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: gsaranpr.2005-N01@gsa.gov

Submit electronic presentations via the Internet to: meeting.2005-N01@gsa.gov.

Please submit comments or presentations only and cite GSAR ANPR 2005-N01 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

Public Meeting: The public meeting will be conducted at the General Services Administration, National Capital Region, 301 7th and D Street, SW, Washington, DC 20407, Auditorium, starting at 9 a.m. to 4:00 p.m. EST., on April 14, 2005, to ensure open dialogue between the Government and interested parties on this important topic.

Special Instructions. The submitted presentations will be the only record of the public meeting. If you intend to

have your presentation considered as a public comment in the formulation of the proposed rulemaking, the presentation must be submitted separately as a public comment as instructed above.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ernest Woodson, at 202-501-3775, at least 5 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, 202-501-3775.

SUPPLEMENTARY INFORMATION:

Background

Currently, FAR Part 12, Acquisition of Commercial Items, prescribes policies and procedures unique to the acquisition of commercial items under FAR Part 12. FAR Part 12 implements the Government's preference for the acquisition of commercial items as contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 by establishing policies more closely resembling those of the commercial marketplace. The clause, FAR 52.212-4, Contract Terms and Conditions—Commercial Items, that includes terms and conditions applicable to each acquisition procured under FAR Part 12 is, to the maximum extent practicable, consistent with customary commercial practices. The clause includes a provision, FAR 52.212-4(p), Limitation of liability, that provides; "Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items." Also, FAR 12.302(b) allows the contracting officer to tailor the clause at FAR 52.212-4 to adapt to market conditions for each commercial acquisition. In addition to the limitation of liability clause and the provision at FAR 12.302, Federal contracts typically include a broad range of standard contract clauses such as warranties and liquidated damages that provide exclusive remedies for nonperformance that limit the Government to the specific remedies set forth in the clause.

Likewise, the Contract Disputes Act of 1978 provides for the resolution of any failure on the part of the Government and the contractor to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to a Government contract to be

a dispute to be resolved in accordance with FAR 52.233-1, Disputes.

Notwithstanding specific adjustments and other remedies provided in Government contracts for contractor deficiencies or nonperformance, concerns have been raised that—

- FAR clause 52.212-4(p) and the "tailoring" provision at FAR 12.302, do not reach the level of commercial standards and that unlimited consequential or other incidental or special damages are not necessary and are, in fact, counterproductive to efficient procurement, raising costs and establishing barriers to commercial companies considering whether to do business with the Federal Government;
- Although FAR 12.302 permits contracting officers to tailor the limitation of liability clause at FAR 52.212-4(p), some companies assert that contracting officers are unwilling to do so, leaving contractors with a take-it or leave-it option and contracts that deviate from the commercial marketplace, making contractors in general less willing to sign on to such contracts;

- The commercial practice, unlike FAR 52.212-4(p), that waives liability for consequential damages resulting from any defect or deficiencies in accepted items, provides for a complete waiver of consequential damages;

- Contractors would make risk decisions and negotiate Government contracts without having to add an uncertainty premium as to liability protection, if FAR Part 12 were appropriately amended to reflect commercial practices; and
- Contractors also request that we make the waiver of consequential damages for commercial products and services available under other provisions of the FAR.

Similarly, the General Accounting Office and periodically GSA's IG raise concerns regarding GSA's right to access and examine contractor records after contract award. GSA's primary vehicle for conducting post-award audits is GSAR 552.215-70, Examination of Records by GSA, that gives the Administrator of GSA, or any duly authorized representative, typically the GSA Inspector General's Office of Audits, access to and the right to examine contractor records relating to over billings, billing errors, compliance with the Industrial Funding Fee (IFF) clause of the contract, and compliance with the Price Reduction Clause under MAS contracts.

In addition to the GSA Examination of Records clause, GSA may use a number

of other authorities to conduct a post-award review of a contractor's records. These other authorities include FAR 52.212-5 which authorizes the Comptroller General of the United States to access and examine a contractor's directly pertinent records involving transactions related to the contract; GSAR 515.209-70(b) that permits a contracting officer to modify the GSA Examination of Records Clause to define the specific area of audit (e.g., the use or disposition of Government—furnished property, compliance with price reduction clause, etc.), and the right of the GSA Inspector General to issue subpoenas for contractor records under the Inspector General Act of 1978.

Contractors' major concerns with GSA's post-award audit authority include complaints that they are too broad and not consistent with commercial contract practices.

In consideration of the above concerns, we have questions as to how the taxpayer may benefit from any revisions to the GSAR to address contractor concerns regarding limitation of liability or post-award audits. In addition, we are interested in exploring whether GSA should modify the Examination of Records clause at GSAR 552.215-71 to reinstate post-award access to and the right to examine records to verify that preaward/ modification pricing, sales, or other data related to the supplies or services offered under a contract which formed the basis for an award/modification was accurate, current, and complete.

We are also interested in learning what, if any, impact the Services Acquisition Reform Act of 2002 and 2003 has on the issue of revising the GSAR to address limitations of liability.

In this advance notice of proposed rulemaking and notice of public meeting, GSA is seeking input from both Government and industry on whether the GSAR should be revised to waive consequential damages in the purchase of commercial items under FAR Parts 12, 13, 14, and 15, and whether GSA should modify its policy and practices with regard to the addition of post award audit clauses into contracts it awards.

Dated: April 4, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

[FR Doc. 05-7039 Filed 4-11-05; 8:45 am]

BILLING CODE 6820-61-S

Notices

Federal Register

Vol. 70, No. 69

Tuesday, April 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

Animal and Plant Health Inspection Service

[Docket No. 05-020-1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to protect endangered species of terrestrial plants.

DATES: We will consider all comments that we receive on or before June 13, 2005.

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

EDOCKET: Go to <http://www.epa.gov/feddoCKET> 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 you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document. Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05-020-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 05-020-1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and

Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations to protect endangered species of terrestrial plants, contact Mr. James Petit de Mange, CITES and Plant Inspection Station Coordinator, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road, Unit 60, Riverdale, MD 20737; (301) 734-7839. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734-7477.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Number: 0579-0076.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for protecting endangered species of terrestrial plants by regulating the individuals or entities who are engaged in the business of importing, exporting, or reexporting these plants.

To carry out this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355. In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora regulations at 50 CFR 17.12 or 23.23 must obtain a protected plant permit. This includes importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. This does not include persons engaged in business

merely as carriers or customhouse brokers.

To obtain a protected plant permit, these individuals or entities must complete an application and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States, exported, or reexported, provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species requires the use of this application process, as well as the use of other information collection activities, such as notifying APHIS of the impending importation, exportation, or reexportation of endangered species, marking containers used for the importation, exportation, and reexportation of plants, and creating and maintaining records of importation, exportation, and reexportation.

The information provided by these information collection activities is critical to our ability to carry out the responsibilities assigned to us by the Endangered Species Act. These responsibilities include the careful monitoring of importation, exportation, and reexportation activities involving endangered species of plants, as well as investigating possible violations of the Endangered Species Act.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.13575 hours per response.

Respondents: U.S. importers, exporters, and reexporters of endangered species of terrestrial plants.

Estimated annual number of respondents: 8,197.

Estimated annual number of responses per respondent: 4.4647.

Estimated annual number of responses: 36,597.

Estimated total annual burden on respondents: 4,968 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5-1682 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, April 18, 2005. The meeting will include routine business, a discussion of larger scale projects, and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held April 18, 2005, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, RAC Coordinator, Klamath National Forest, (530) 841-4423 or electronically at rtalley@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the

opportunity to address the Committee at that time.

Dated: April 5, 2005.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 05-7280 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Stay of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Stay of the determination under section 129(a)(4) of the Uruguay Round Agreements Act made by the International Trade Commission, respecting softwood lumber products from Canada (Secretariat File No. USA-CDA-2005-1904-03).

SUMMARY: Pursuant to the Notice of Consent Motion to Stay Panel Proceedings by the complainants, the panel review is stayed pending the outcome of the ongoing Extraordinary Challenge Committee proceeding. A panel has not been appointed to this panel review. Pursuant to Rule 83(1) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is stayed as of March 22, 2005.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established

Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules").

These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and stayed pursuant to these Rules.

Dated: April 4, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5-1667 Filed 4-11-05; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032105A]

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

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

ACTION: Notice.

SUMMARY: NMFS issues this notice to notify the public that the United States has accepted conservation and management measures pertaining to fishing in Antarctic waters managed by the Commission for the Conservation of Antarctic Marine Living Resources (Commission or CCAMLR). The Commission adopted these measures at its twenty-third meeting in Hobart, Tasmania, October 25 to November 5, 2004. The measures have been agreed upon by the Member countries of CCAMLR, including the United States, in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources (the Convention). The accepted conservation and management measures: restrict overall catches and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; set fishing seasons; require the use of a centralized Vessel Monitoring System (C-VMS); and urge the Members of CCAMLR as a matter of priority to adopt and use the electronic *Dissostichus* catch document. The Commission also adopted a number of non-binding resolutions urging action by Commission Members and Contracting Parties.

ADDRESSES: Copies of the CCAMLR conservation and management measures may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315

East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Robin Tuttle, 301-713-2282.

SUPPLEMENTARY INFORMATION:

Background

Individuals interested in CCAMLR and the Convention Area should see the U.S. Department of State's January 26, 2005 **Federal Register** notice (70 FR 3772) and 50 CFR part 300, subpart G - Antarctic Marine Living Resources.

The conservation and management measures and resolutions adopted at the twenty-third meeting of CCAMLR: restrict overall catches and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; set fishing seasons; require the use of a C-VMS; and urge the Members of CCAMLR as a matter of priority to adopt and use the electronic *Dissostichus* catch document. The Commission also adopted a number of non-binding resolutions urging action by Commission Members and Contracting Parties.

The full text of the measures and resolutions were included in a notice published in the **Federal Register** on January 26, 2005 (70 FR 3772) by the Department of State. Public comments were invited on the notice, but no public comments were received. Through this action, NMFS notifies the public that the United States has accepted the measures adopted at CCAMLR's twenty-third meeting, and that pursuant to the Convention and 16 U.S.C. 2434 *et seq.*, these measures are in effect. NMFS provides the following summary of the conservation and management measures as a courtesy.

Compliance

The Commission adopted a conservation measure requiring additional details on every vessel a member country licenses to fish in the Convention Area, including: the name of the fishing vessel (any previous names, if known); registration number; vessel's International Maritime Organization (IMO) number, if issued; external markings and port registry; the nature of the authorization to fish granted by the Flag State, specifying time periods authorized for fishing; areas of fishing; species targeted; gear used; previous flag, if any; international radio call sign; the name and address of the vessel's owner(s) and any beneficial owner(s), if known; name and address of license owner, if different from vessel owner; type of vessel; where and when

built; length; three color photographs of the vessel; and where applicable, details of the implementation of the tamper-proof requirements on the satellite-linked vessel monitoring device.

The Commission requested, to the extent practicable, the following additional information for vessels notified for fishing in exploratory fisheries: name and address of operator, if different from vessel owner; name and nationality of master and, where relevant, of fishing master; type of fishing method or method; beam in meters; gross registered tonnage; vessel communication types and numbers; normal crew complement; power of main engine or engines in kilowatts; carrying capacity in tons; number of fish holds and their capacity in cubic meters; and any other information in respect of each licensed vessel considered appropriate (e.g., ice classification) for the purposes of the implementation of the conservation measure.

The requirements for the information specified in the two vessel information measures will not enter into force until August 1, 2005. A list of licensed vessels will be placed on the CCAMLR website at www.ccamlr.org. NMFS proposes to require all of this information through a future amendment to the reporting requirements on the Antarctic Marine Living Resources harvesting permit application.

Based upon the results of a trial-run of a C-VMS conducted by the CCAMLR Secretariat during the 2003/2004 fishing season, the Commission revised the requirements for its vessel monitoring system (VMS) and adopted a conservation measure to implement C-VMS. This conservation measure requires a vessel fishing in CCAMLR managed waters to use a VMS that automatically transmits the vessel's position at least every four hours to a land-based fisheries monitoring center of its Flag State. Each Contracting Party to the Convention must forward the VMS reports and messages received to the CCAMLR Secretariat as soon as possible, but not later than four hours after receipt for exploratory longline fisheries or following departure from the Convention Area for all other fisheries. The conservation measure requires the CCAMLR Secretariat to place a list of vessels submitting VMS reports on a password-protected section of the CCAMLR website. The list will be divided into subareas and divisions, without indicating the exact position of vessels. The conservation measure also requires the CCAMLR Secretariat to transmit VMS data and reports using

secure Internet protocols Secure Socket Layer (SSL), Data Encryption Standard (DES) or verified certificates obtained from the Secretariat. These protocols are similar to those in use by the North Atlantic Fisheries Organization (NAFO). The United States informed CCAMLR that although the new conservation measure only requires C-VMS reporting in the CCAMLR Convention Area, the United States will continue to require its flagged vessels to have on board a VMS unit which transmits the vessel's position from port to port every four hours. The United States will also require, as a condition of import, that vessels of other flagging States seeking to import toothfish into the United States have on board a VMS unit which transmits the vessel's position from port to port every four hours.

The Commission adopted amendments to its conservation measures delineating a process for the listing of vessels suspected of illegal, unregulated or unreported (IUU) fishing or trading (the IUU Vessel List). The Commission will require additional detail on any vessel proposed by a Member for inclusion on the CCAMLR IUU Vessel List including previous names, flags, owners, and operators and a summary of activities that justify inclusion of the vessel on the list. All CCAMLR members are urged to prohibit trade with the vessels on the CCAMLR IUU Vessel List. NMFS may implement a prohibition on the importation of toothfish harvested by vessels identified on the CCAMLR IUU Vessel List in a future rulemaking.

Vessel Safety

The Commission adopted a resolution urging Members to promote the safety of all those on board vessels fishing in the Convention Area by assuring that fishing crews and scientific observers receive survival training and are provided with appropriate and well maintained equipment and clothing.

Exploratory Fisheries

The Commission revised its conservation measure on exploratory fisheries to require specific and detailed information on the vessels that are notified for participation in exploratory fisheries. A vessel on the IUU Vessel List established by the Commission will not be permitted to participate in exploratory fisheries.

Data Reporting

The Commission revised its conservation measure requiring that 5-day catch and effort reports reach the CCAMLR Secretariat not later than two working days after the end of the

reporting period for exploratory fisheries to apply to all other fisheries reporting under the 5-day catch and effort system. The conservation measure also permits Contracting Parties to authorize its vessels to report directly to the Secretariat. The Commission noted in a report of its meeting its agreement that monthly catches in krill fisheries should continue to be reported using the format and deadline specified in the monthly catch and effort reporting system.

Catch Documentation Scheme (CDS)

The Commission adopted a resolution noting the successful completion of the electronic toothfish document trial and urging CCAMLR Contracting and Non-Contracting Parties to adopt the electronic format as a matter of priority. The United States indicated its intention, through future rulemaking, to require that all imports of toothfish into the United States be documented using the electronic format.

Incidental Mortality Associated with Fishing

The Commission endorsed the Scientific Committee's recommendations for a protocol for testing integrated weighted longlines in new and exploratory fisheries and revised the seabird mitigation conservation measures to require use of the protocol. The protocol was required in Subareas 88.1 and 88.2 during the 2003/2004 season as a part of an experimental trial. Under the revised conservation measure, fishers employing the protocol to test the sink rate of their longlines are now allowed to set lines in Subareas 48.6, 88.1 and 88.2 Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2 during daylight hours. Lines sinking at the rate specified in the protocol lessen the time during which bait on the lines is visible and attractive to seabirds. Fishers not employing the protocol are restricted to night setting to minimize seabird interaction. NMFS may propose to amend its regulations to allow the use of the protocol for using integrated weighted longlines and to restrict fishers choosing not to use the protocol to night settings in future rulemaking.

The Commission confirmed that all seabird bycatch limits set in conservation measures include both the count of dead seabirds and those injured but released alive.

The Commission agreed with the recommendation of its Working Group on the Incidental Mortality Associated with Fishing that "offal" be defined to include discarded bait and discarded fish bycatch.

The Commission adopted a resolution inviting the Inter-American Tropical Tuna Commission, the International Commission for the Conservation of Atlantic Tunas, The South East Atlantic Fisheries Organisation, the Indian Ocean Tuna Commission, the Commission for the Conservation of Southern Bluefin Tunas, the Agreement on the Organization of the Permanent Commission on the Exploitation and Conservation of the Marine Resources of the South Pacific, the Southwest Indian Ocean Fisheries Commission, the Commission for Highly Migratory Species in the Central and Western Pacific, and the Western Indian Ocean Tuna to implement or develop mechanisms to require the collection, reporting and dissemination of data on incidental mortality of seabirds. CCAMLR Members who are also members of these Regional Fishery Management Organizations (RFMO) are urged to raise issues of seabird mortality within those organizations. The resolution also urges Flag States conducting longline and other fishing outside the CCAMLR Convention Area which incidentally take seabirds that breed inside the Convention Area in areas where such mechanisms requiring the collection, reporting and dissemination of data on incidental mortality of seabirds are unavailable or where systematic reporting has not commenced to provide the CCAMLR Secretariat with summary data. Finally, the resolution encourages Flag States involved with new and developing RFMOs to request that incidental mortality of seabirds and other taxa is adequately addressed and mitigated by the RFMO.

The Scientific Committee recommended several seal bycatch mitigation measures to the Commission. The Commission endorsed these measures in its report but did not adopt them as a conservation measure. The mitigation measures were that: (1) information on all seal excluder devices be combined and circulated to CCAMLR member countries and other interested parties; (2) every vessel fishing for krill employ a device for excluding seals or facilitating their escape from the trawl net; (3) observers on krill vessels be required to collect reliable data on seal entrapment and on the effectiveness of mitigation devices; (4) all observers complete data forms accurately, consistently and comprehensively; and (5) the United Kingdom be requested to submit their observer data to the CCAMLR Secretariat. In a future rulemaking, NMFS will propose a requirement that all krill trawl vessels

fishing in the Convention Area use a seal excluder device.

Protected Areas

The Commission revised the conservation measure requirements for information to be detailed on maps appended to management plans for CCAMLR Ecosystem Monitoring Program (CEMP) sites. The Commission amended the background information in the annexes to the conservation measures for the protection the Cape Shirreff and Seal Islands CEMP sites. The amendments were made to reflect the extent and development of human activities in the early 1880s.

Prohibitions on Directed Fishing

The Commission revised the conservation measure prohibiting directed fishing for *Dissostichus* species to apply it from December 1, 2004, to November 30, 2005, in Statistical Subarea 48.5 and continued the indefinite prohibitions on directed fishing for *Dissostichus* species and certain other finfish species in conservation measures adopted at earlier meetings.

The Commission, through a new conservation measure, limited directed fishing in the 2004/2005 season in Division 58.5.2 to *Dissostichus eleginoides* and *Champocephalus gunnari* and set bycatch limits for other species.

Bycatch

The Commission, through a new conservation measure, revised the limitations on bycatch in new and exploratory fisheries in Statistical Division 58.5.2 for the 2004/2005 season.

The Commission, through a new conservation measure, also revised the bycatch limits in all new and exploratory fisheries for the 2004/2005 season in all areas containing SSRUs (Statistical Subareas 48.6, 88.1 and 88.2, and Statistical Subdivisions 58.4.2, 58.4.3a, 58.4.3b) for all *Macrourus*, skates and rays, and other species.

Dissostichus Species

The Commission extended the general measures in its conservation measure for exploratory fisheries for *Dissostichus* species in the Convention Area to the 2004/2005 season. The Commission also adopted area specific conservation measures for *Dissostichus* species for the 2004/2005 season.

The Commission set a catch limit of 3,050 tons for the longline fishery for *D. eleginoides* in Subarea 48.3 in the 2004/2005 season, set bycatch limits on other species and indicated that any catch of

crab in any pot fishery will count against the catch limit for crab in Subarea 48.

The Commission set a combined catch limit of 2,787 tons of *D. eleginoides* in Division 58.5.2 west of 79°20' E from December 1, 2004, to November 30, 2005, for trawl fishing and from May 1, 2005, to August 31, 2005, for longline fishing.

The Commission designated several *Dissostichus* fisheries as exploratory fisheries for the 2004/2005 fishing season. These fisheries are total allowable catch fisheries and are open only to the flagged vessels of countries that notified CCAMLR of an interest by named vessels to participate in the fisheries.

The exploratory fisheries for *Dissostichus* species authorized by the Commission for the 2004/2005 fishing season include the following: (1) longline fishing in Statistical Division 58.4.1 by Chile, Republic of Korea, New Zealand, Spain and Ukraine; (2) longline fishing in Statistical Subarea 48.6 by Japan, Republic of Korea and New Zealand; (3) longline fishing in Statistical Division 58.4.2 by Chile, Republic of Korea, New Zealand, Spain and Ukraine; (4) longline fishing in Statistical Division 58.4.3a (the Elan Bank) outside areas under national jurisdiction by Australia, Republic of Korea and Spain; (5) longline fishing in Statistical Division 58.4.3b (the BANZARE Bank) outside areas of national jurisdiction by Australia, Chile, Japan, Republic of Korea and Spain; (6) longline fishing in Statistical Subarea 88.1 by Argentina, Australia, New Zealand, Norway, Russia, South Africa, Spain, Ukraine, United Kingdom, and Uruguay; and (7) longline fishing in Statistical Subarea 88.2 by Argentina, New Zealand, Norway and Russia.

Champsocephalus gunnari

The Commission adopted area specific conservation measures for *C. gunnari* for the 2004/2005 season.

The Commission set the overall catch limit for the *C. gunnari* trawl fishery in Subarea 48.3 for the 2004/2005 season at 3,574 tons and continued previously adopted restrictions on the fishery.

The Commission also set the catch limit for *C. gunnari* trawl fishery within defined areas of Division 58.5.2 for the 2004/2005 season at 1,864 tons and continued previously adopted restrictions on and reporting requirements for the fishery.

Crab

The Commission adopted area specific conservation measures for crab species for the 2004/2005 season. The

Commission set the total allowable catch level for the pot fishery for crab for the 2004/2005 fishing season at 1,600 tons and continued to limit participation to one vessel per member country conducted as an experimental harvest regime.

Squid

The Commission also adopted area specific conservation measures for squid for the 2004/2005 season. The Commission set the total allowable catch limit for the exploratory jig fishery for *Martialia hyadesi* for the 2004/2005 fishing season at 2,500 tons.

Krill

The Commission adopted area specific conservation measures for krill for the 2004/2005 season. The Commission carried forward the precautionary catch limits for krill in Statistical Area 48 at 4.0 million tons overall and, as divided by subareas, at 1.008 million tons in Subarea 48.1, 1.104 million tons in Subarea 48.2, 1.056 million tons in Subarea 48.3, and 0.832 million tons in Subarea 48.4.

Authority: 16 U.S.C. 2431 *et seq.*

Dated: April 7, 2005.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 05-7313 Filed 4-11-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 001215353-5080-05]

Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT): Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: Pursuant to the Consolidated Appropriations Act 2005, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications

for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account.

DATES: Applications must be received on or before 5 p.m. Eastern Daylight Saving Time, May 12, 2005. Applications submitted by facsimile or electronic means are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after the deadline.

ADDRESSES: To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H-4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482-5802; fax: (202) 482-2156.

SUPPLEMENTARY INFORMATION:

Electronic Access

The full funding opportunity announcement for the PEACESAT Fiscal Year (FY) 2005 grant cycle is available through <http://www.Grants.gov> or by contacting the PTFP office at the address noted above. Application materials may be obtained electronically via the Internet (<http://www.ntia.doc.gov/otiahome/peacesat.html>).

Funding Availability

The Congress has appropriated \$19.8 million for FY 2005 Public Telecommunications Facilities Program (PTFP) and PEACESAT awards. Of this amount, NTIA anticipates making a single award for approximately \$500,000 for the PEACESAT Program in FY 2005. For FY 2004, NTIA issued one award for the PEACESAT project in the amount of \$493,130.

Statutory and Regulatory Authority

Funding for the PEACESAT Program is provided pursuant to Public Law 108-447, "The Consolidated Appropriations Act, 2005" and Public Law 106-113, "The Consolidated Appropriations Act, Fiscal Year 2000." Public Law 106-113 provides "That, hereafter, notwithstanding any other provision of law, the Pan-Pacific

Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds." The PEACESAT Program was authorized under Public Law 100-584 (102 Stat. 2970) and also Public Law 101-555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Public Law 108-447 appropriated \$19.8 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. A solicitation notice for the PTFP Program was published in the **Federal Register** on January 26, 2005. Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the January 26, 2005 Notice and are exempt from the PTFP regulations at 15 CFR part 2301.

Catalog of Federal Domestic Assistance: N/A.

Eligibility

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Evaluation and Selection Process

Each eligible application is evaluated by three outside reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The reviewers will evaluate applications according to the criteria in the following section and provide individual written ratings of each application.

State Single Point of Contact (SPOC) offices, per Executive Order 12372, may provide recommendations on applications under consideration.

PTFP places a summary of applications received on the Internet. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. Listing does not preclude subsequent return of the application or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

The reviewer's ratings are provided to the PTFP staff and a rank order is prepared according to score. The PTFP program staff prepares summary recommendations for the Director of the Public Broadcasting Division. These recommendations incorporate the outside reviewers' ratings and incorporate analysis based on the degree to which a proposed project meets the PEACESAT Program purposes and cost eligibility. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project, and (3) whether the reviewers consistently applied the evaluation criteria. The analysis by program staff is provided to the Director of the Public Broadcasting Division in writing.

The Director considers the summary recommendations prepared by program staff in accord with the funding priorities and selection factors referenced in the next section and recommends the funding order of the applications for the PTFP and PEACESAT Programs in three categories: "Recommended for Funding," "Recommended for Funding If Funds Are Available," and "Not Recommended for Funding." The Director presents recommendations to the Associate Administrator, Office of Telecommunications and Information Applications (OTIA), for review and approval.

Upon review and approval based on the funding priorities and selection factors referenced in the next section by the Associate Administrator of the Office of Telecommunications and Information Applications (OTIA), the Associate Administrator's and the Director's recommendations are presented to the Selecting Official, the Assistant Secretary for Communications and Information, who is the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award, taking into consideration the outside reviewers' ratings, the Director's recommendations, and the degree to which the slate of applications, taken as a whole, satisfies the PTFP and PEACESAT Programs' stated purposes.

The selected applications are negotiated between NTIA staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what NTIA is considering funding. Negotiation does not ensure that an award will be made. When the negotiations are completed, the Director recommends final selections to the NTIA Administrator, applying the same selection factors described above. The Administrator then makes the final

award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PTFP Program in 15 CFR 2301.1(a) and (c) and for the PEACESAT Program.

Funding Priorities and Selection Factors

The selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Communications and Information for the PTFP Program are described in 15 CFR 2301.18. These selection factors are also used, as applicable, for selection of applications for funding for the PEACESAT Program.

Evaluation Criteria

Each eligible application that is timely received, is materially complete, and proposes an eligible project will be considered under the evaluation criteria described here. The first three criteria—1. Meeting the Purposes of the PEACESAT Program, 2. Extent of Need for the Project, and 3. Plan of Operation for the Project—are each worth 25 points. Criterion 4, Budget and Cost Effectiveness, is worth 20 points. Criterion 5, Quality of Key Personnel, is worth 5 points.

Criterion 1. Meeting the Purposes of the PEACESAT Program, including (i) how well the proposal meets the objectives of the PEACESAT Program and (ii) how the objectives of the proposal further the purposes of the PEACESAT Program.

Criterion 2. Extent of Need for the Project. The extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) the needs addressed by the project; (ii) how the applicant identifies those needs; (iii) how those needs will be met by the project; and (iv) the benefits to be gained by meeting those needs.

Criterion 3. Plan of Operation for the Project, including (i) the quality of the design of the project; (ii) the extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) how well the objectives of the project relate to the purposes of the PEACESAT Program; (iv) the quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapped condition.

Criterion 4. Budget and Cost Effectiveness. The extent to which (i) the budget is adequate to support the project; and (ii) costs are reasonable in relation to the objectives of the project.

Criterion 5. Quality of Key Personnel the applicant plans to use on the project, including (i) the qualifications of the project director if one is to be used; (ii) the qualifications of each of the other key personnel to be used in the project; (iii) the time that each person will commit to the project; and (iv) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapped condition. In this section, "qualifications" refers to experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

Cost Sharing Requirements

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the January 26, 2005 Notice regarding the PTFP Program

Intergovernmental Review

PEACESAT applications are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," if the state in which the applicant organization is located participates in the process. Usually submission to the State Single Point of Contact (SPOC) needs to be only the first two pages of the Application Form, but applicants should contact their own SPOC offices to find out about and comply with its requirements. The names and addresses of the SPOC offices are listed on the PTFP Web site and at the Office of Management and Budget's home page at <http://www.whitehouse.gov/omb/grants/spoc.html>.

Universal Identifier

All applicants (nonprofit, State, local government, universities, and tribal organizations) will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 (67 FR 66177) and April 8, 2003 (68 FR 17000) **Federal Register** notices for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line 1-866-705-5711 or via the

Internet (<http://www.dunandbradstreet.com>).

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to this solicitation.

Limitation of Liability

In no event will the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been approved under OMB Control No. 0660-0003.

Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dr. Bernadette McGuire-Rivera,
Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 05-7306 Filed 4-11-05; 8:45 am]

BILLING CODE 3510-60-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

March 31, 2005.

[**Editor's Note:** The following document was filed for public inspection on March 31, 2005, but due to an inadvertent error was not published in the Federal Register issue of April 4, 2005.]

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a petition for a determination that certain coat weight fabrics of 100 percent carded camelhair, 100 percent carded cashmere, or a blend of carded cashmere and wool fibers cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On March 30, 2005, the Chairman of CITA received a petition from Neville Peterson, LLP, on behalf of S. Rothschild & Co., Inc. of New York, New York, alleging that certain coat weight fabrics of 100 percent carded camelhair, 100 percent carded cashmere, or a blend of carded cashmere and wool fibers, of the specifications detailed below, classified in subheading 5111.19.6020 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that outerwear articles of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 27, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the

CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 30, 2005, the Chairman of CITA received a petition on behalf of S. Rothschild & Co., Inc. of New York, New York, alleging that certain coat weight fabrics of 100 percent carded camelhair, 100 percent carded cashmere, or a blend of carded cashmere and wool fibers, of the specifications detailed below, classified in HTSUS subheading 5111.19.6020, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for outerwear articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Exhibit 1

100 percent camel hair fabric carded weight:	370-400 grams per square meter
width:	148-150 cm
yarn thickness:	16.5 microns

Exhibit 2

100 percent cashmere fabric, carded weight:	335-400 grams per square meter
width:	148-150 cm
yarn diameter:	12 microns

Exhibit 3

80 percent wool/ 20 percent cashmere carded weight:	370-400 grams per square meter
width:	148/150 cm
yarn thickness:	average 20 microns

The petitioner emphasizes that the weight limit of the subject fabrics precludes these fabrics from being used in the production of blazers, suits, and other types of wearing apparel. The request only applies to coat weight fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than April 27, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05-6733 Filed 3-31-05; 3:53 pm]

BILLING CODE 3510-DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

April 6, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

On April 4, 2005, the notice titled "Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)" concerning certain 100 percent cotton, carbon-merized, four-thread twill weave fabric was erroneously published on April 4, 2005 (70 FR 17074). The following is the correct document.

ACTION: Request for public comments concerning a request for a determination that certain 100 percent cotton, carbon-merized, three or four-thread twill weave fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On April 6, 2005, the Chairman of CITA received a petition from Sandler, Travis, & Rosenberg, P.A., on behalf of their client, Dillard's Inc., alleging that certain 100 percent cotton, carbon-merized, three or four-thread twill weave fabric, of the specifications detailed below, classified in subheading 5208.33.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that woven cotton shirts and blouses of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 27, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United

States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On April 6, 2005, the Chairman of CITA received a petition on behalf of Dillard's Inc. alleging that certain 100 percent cotton, carbon emerized, three or four-thread twill weave fabrics, of the specifications detailed below, classified under HTSUS subheading 5208.33.00.00, for use in woven cotton shirts and blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for woven cotton shirts and blouses that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

HTS Subheading: 5208.33.00.00
Petitioner Style No.: 03842
Fiber Content: 100 percent cotton

Yarn Number: 39/1 - 41/1 metric combed ring spun warp; 39/1 - 41/1 carded ring spun filling; overall average yarn number: 38 - 40 metric
Thread Count: 43 - 45 warp ends per centimeter; 24 - 26 filling picks per centimeter; total 61 - 71 threads per square centimeter
Weave: three or four-thread twill
Weight: 176 - 182 grams per square meter
Width: 168 - 172 centimeters
Finish: (Piece) dyed, carbon emerized on both sides

The petitioner states:

The yarns must be ring spun, the warp yarn combed, and the filling yarn carded. The yarn size and thread count and consequently, the weight of the fabric must be exactly or nearly exactly as specified in the accompanying Exhibit or the fabric will not be suitable for its intended use. The fabric must be carbon emerized, not napped, on both sides. The instant fabric has been lightly emerized on the technical back and somewhat moreso on the face. Napping will produce a different and unacceptable product.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than April 27, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However,

information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05-7365 Filed 4-7-05; 4:16 pm]

BILLING CODE 3510-DS

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a), that the Commodity Futures Trading Commission's Technology Advisory Committee will conduct a public meeting on Thursday, April 28, 2005. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. The meeting will begin at 1 p.m., and last until 4 p.m. The purpose of the meeting is to discuss technology-related issues involving the financial services and commodity markets.

The agenda will consist of the following:

- (1) What constitutes "prior art" in the patents process.
- (2) Intellectual property in trading and settlements technology.
- (3) Restrictions on the usage of exchange settlement prices.
- (4) Market data piracy.

The meeting is open to the public. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: Technology Advisory Committee, c/o Acting Chairman Sharon Brown-Hruska,

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Acting Chairman Brown-Hruska in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration. For further information concerning this meeting, please contact Ananda Radhakrishnan, Counsel to Acting Chairman Brown-Hruska, (202) 418-5188.

Issued by the Commission in Washington, DC on April 7, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05-7296 Filed 4-11-05; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0058]

Federal Acquisition Regulation; Submission for OMB Review; Schedules for Construction Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning schedules for construction contracts. A request for public comments was published in the Federal Register at 70 FR 4821, January 31, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 12, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000-0058, schedules for construction contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT

Cecelia Davis, Contract Policy Division, GSA (202) 219-0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal construction contractors may be required to submit schedules, in the form of a progress chart, showing the order in which the contractor proposes to perform the work. Actual progress shall be entered on the chart as directed by the contracting officer. This information is used to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.

B. Annual Reporting Burden

Respondents: 2,600.

Responses Per Respondent: 2.

Annual Responses: 5,200.

Hours Per Response: 1.

Total Burden Hours: 5,200.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0058, Schedules for Construction Contracts, in all correspondence.

Dated: April 1, 2005

Rodney P. Lantier,

Director, Contract Policy Division

[FR Doc. 05-7268 Filed 4-11-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0060]

Federal Acquisition Regulation; Submission for OMB Review; Accident Prevention Plans and Recordkeeping

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning accident prevention plans and recordkeeping. A request for public comments was published in the Federal Register at 70 FR 4097, January 28, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 12, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000-0060, accident prevention plans and recordkeeping, in all correspondence.

FOR FURTHER INFORMATION CONTACT

Cecelia Davis, Contract Policy Division, GSA (202) 219-0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 48 CFR 52.236-13 Accident Prevention requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by OSHA (OMB Control No. 1220-0029). The FAR requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, the contractor must submit a written proposal for implementation of the clause. The Accident Prevention Plan, for projects that are hazardous or of long duration, is analyzed by the contracting officer along with the agency safety representatives to determine if the proposed plan will meet the requirement of the safety regulations and applicable statutes. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The Accident Prevention Plan is placed in the contract file for reference.

B. Annual Reporting Burden

Respondents: 2,106.

Responses Per Respondent: 2.

Annual Responses: 4,212.

Hours Per Response: 2.

Total Burden Hours: 8,424.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Dated: April 5, 2005

Rodney P. Lantier

Director, Contract Policy Division.

[FR Doc. 05-7269 Filed 4-12-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**Department of the Air Force****HQ USAF Scientific Advisory Board Meeting**

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of the

forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to present and discuss the findings of the 2004 Science and Technology Quality Review of Air Force Research Laboratory programs. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: April 21, 2005.

ADDRESSES: 1670 Air Force Pentagon, Room 4E916, Washington, DC 20330-1670.

FOR FURTHER INFORMATION CONTACT:

Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330-1180, (703) 697-4808.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05-7283 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE**Department of the Air Force****HQ USAF Scientific Advisory Board Meeting**

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to convene the Air Force Command and Control Intelligence, Surveillance, and Reconnaissance Center (AFC2ISRC) Advisory Group to review Theater Battle Operations Net-centric Environment (TBONE) activities. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: April 28-29, 2005.

ADDRESSES: HQ AFC2ISRC, 130 Andrews St., Ste 205, Langley AFB VA 23665-1993.

FOR FURTHER INFORMATION CONTACT:

Major Chris Berg, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330-1180, (703) 697-4811.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05-7285 Filed 4-11-05; 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 May 12, 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: April 6, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Applications for Assistance (Sections 8002 and 8003) Impact Aid Program.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 1,061,320.

Burden Hours: 531,211.

Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

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 2679. 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. 05-7292 Filed 4-11-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: National Board for Education Sciences; ED.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portion of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at (202) 219-2253 by April 20. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: April 27, 2005.

Time: 8:30 a.m. to 4 p.m.

Location: Room 100, 80 F St., NW., Washington, DC 20208-7564.

FOR FURTHER INFORMATION CONTACT:

Mary Grace Lucier, Designated Federal Official, National Board for Education Sciences, Washington, DC 20208. Tel: (202) 219-2253; fax: (202) 219-1466; e-mail: Mary Grace Lucier@ed.gov.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of application for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. On April 27 in its morning session, the Board will hear a presentation related to IES research priorities and receive briefings on IES technical and peer review policy and procedures and on its communications strategy and plan. The Board's committees, *i.e.*, on Research, Evaluation, Statistics, and Special Education Research, will meet separately in adjacent rooms from approximately 1:15 p.m. to 2:15 p.m. Members of the public who wish to attend these sessions should contact

Mary Grace Lucier to ensure adequate seating.

The full Board will meet in closed session from approximately 3 p.m. to 4 p.m. The Board will discuss the qualifications and fitness of at least two candidates for the position of executive director. This meeting relates to the internal personnel practices of the agency, and if information about the candidates were disclosed in open session, this would constitute an unwarranted invasion of personal privacy. The Board closes this portion of the meeting under the authority of Section 10 (d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552(b)(6)). A final agenda will be available from Mary Grace Lucier on April 20.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public. Records will be kept of all Board proceedings and will be available for public inspection at the office of the National Board for Education Sciences, Suite 100, 80 F St., NW., Washington, DC 20208.

Dated: April 15, 2005.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 05-7302 Filed 4-11-05; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to establish for three years, an information collection package with the Office of Management and Budget (OMB) concerning a paperwork and reporting burden associated with a requirement for internal audit procedures for management contractors who manage Department of Energy facilities. Reports would consist of an internal audit implementation design, a summary of the previous year's audit activities, and an audit plan for the next fiscal year. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including 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.

DATES: Comments regarding this proposed information collection must be received on or before June 13, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to:

U.S. Department of Energy, Office of Procurement and Assistance Management, Attn: Richard Langston, ME-61, 1000 Independence Ave., SW., Washington, DC 20585 or by fax at (202) 287-1339 or by e-mail at richard.langston@hq.doe.gov and to

Sharon Evelin, IM-11, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, or by fax at 301-903-9061 or by e-mail at Sharon.evelin@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Langston at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.*: 1910-XXXX; (2) *Cooperative Audit Requirements*; (3) *Type of Review*: Initial Review; (4) *Purpose*: To establish internal audit procedures and reporting requirements for management contractors; (5) *Respondents*: There are 27 management contractor respondents; (6) *Estimated Number of Burden Hours*: There is an estimated burden of 270 hours.

Statutory Authority: Sections 644 & 646 of the Department of Energy Organization Act, 42 U.S.C. 7254 and 7256.

Issued in Washington, DC on April 4, 2005.

Sharon Evelin,

*Director, Records Management Division,
Office of the Chief Information Officer.*

[FR Doc. 05-7294 Filed 4-11-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 20, 2005, 9 a.m. to 5:30 p.m., Thursday, April 21, 2005, 9 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301-903-9817; david.thomassen@science.doe.gov), or Ms. Shirley Derflinger (301-903-0044; shirley.derflinger@science.doe.gov), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC-70/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290. The most current information concerning this meeting can be found on the Web site: <http://www.science.doe.gov/ober/berac/announce.html>.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda

Wednesday, April 20, and Thursday, April 21, 2005

- Comments from Dr. Raymond Orbach, Director, Office of Science
- Report of Subcommittee on The Need for Enhanced Research on Cloud Parameterization Methods and Abrupt Climate Change

- Status Report on Restructuring of Aerosol Research Program
- Discussion of new charge to review Terrestrial Carbon Cycle Research
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research
- Discussion on Opportunities in Neural Prosthesis Research
- Status of GTL Roadmap and Facility solicitation
- Update on Environmental Remediation Sciences Division restructuring
- EMSL update
- Status of upcoming EMSL review
- Discussion of BER Long Term Performance Goals
- Science talk
- New business
- Public comment (10 minute rule)

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This notice is being published 15 days before the date of the meeting due to programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 6, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05-7293 Filed 4-11-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP99-301-129]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 6, 2005.

Take notice that on March 31, 2005, ANR Pipeline Company (ANR) tendered for filing and approval amendments to four existing negotiated rate service agreements between ANR and Wisconsin Public Service Commission.

ANR submits that the Amendments reflect changes to the contract quantities and requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. 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.

Linda Mitry,
Deputy Secretary.

[FR Doc. E5-1701 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP96-200-138]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 6, 2005.

Take notice that on March 31, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Oneok Energy Services Company, LP. CEGT states it has entered into an agreement to provide parking service to this shipper under Rate Schedule PHS to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. 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.

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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.

Linda Mitry,
Deputy Secretary.

[FR Doc. E5-1691 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP96-200-139]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 6, 2005.

Take notice that on March 31, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Tenaska Gas Storage, LLC. CEGT states it has entered into an agreement to provide park and loan service to this shipper under Rate Schedule PHS to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1692 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-140]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 6, 2005.

Take notice that on March 31, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Coral Energy Resources, L.P. CEGT states it has entered into an agreement to provide parking service to this shipper under Rate Schedule PHS to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1693 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05-24-000]

The Detroit Edison Company; Notice of Application

April 6, 2005.

Take notice that on March 29, 2005, The Detroit Edison Company (Detroit Edison) filed an application pursuant to section 204 of the Federal Power Act seeking authorization to issue (1) short-term debt securities in an amount not to exceed \$1 billion and (2) secured and unsecured debt securities in an amount not to exceed \$1 billion.

Detroit Edison also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file 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 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 motion to intervene. All such motions or protests should be filed on

or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. eastern time on April 27, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1685 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05-22-000]

Florida Keys Electric Cooperative; Notice of Filing

April 6, 2005.

Take notice that on March 18, 2005, Florida Keys Electric Cooperative Association, Inc. (Florida Keys) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make short-term borrowings in an amount not to exceed \$8.7 million under agreements with CoBank, ABD and the National Rural Cooperative Finance Corporation (CFC).

Florida Keys also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on April 20, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1684 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-518-071]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

April 6, 2005.

Take notice that on March 31, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, Nineteenth Revised Sheet No. 15, to become effective April 1, 2005.

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1683 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-220-016]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

April 6, 2005.

Take notice that on March 31, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, an amended transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and TransCanada PipeLines

Limited (TransCanada) (FT Service Agreement).

Great Lakes states that the FT Service Agreement reflects a negotiated rate arrangement between Great Lakes and TransCanada commencing April 1, 2005.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95-6-000 and RM96-7-000.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1700 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-153-007]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

April 6, 2005.

Take notice that on March 31, 2005, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Substitute Original Sheet No. 135C, to become effective May 1, 2005. Horizon is also filing to cancel Sheet No. 135D.

Horizon states that the filing is being made in compliance with the Commission's Order on Compliance Filing issued March 28, 2005 in Docket No. RP02-153-006.

Horizon states that copies of the filing are being sent to all parties set out on the Commission's official service list in Docket No. RP02-153-000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1688 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-132-002]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Filing

April 6, 2005.

On January 31, 2005, Midwest Energy, Inc. (Midwest) filed comments in which Midwest requests that the Commission direct Kinder Morgan Interstate Gas Transmission LLC (KMIGT) to: (1) Submit a filing removing Midwest as an offending shipper during two directional notice time periods; and (2) to reinstate the refunds that are owed to Midwest as a result of the corrective action. On February 1, 2005, Missouri Gas Energy (MGE) filed a motion to intervene. On February 7, 2005, KMIGT filed its response to Midwest's January 31 filing and MGE's motion to intervene. KMIGT filed revised Appendices A through C as included in its January 14, 2005 amended reconciliation filing in this proceeding. KMIGT states that it has eliminated the penalty amounts attributable to Midwest and included Midwest in the calculation of refunds.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. eastern time on April 25, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1689 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-81-022]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

April 6, 2005.

Take notice that on March 31, 2005, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1-A, the following tariff sheets, to be effective April 1, 2005:

Thirteenth Revised Sheet No. 4G
Fourth Revised Sheet No. 4H

KMIGT states that the above-referenced tariff sheets reflect a negotiated rate contract effective April 1, 2005. KMIGT states that the tariff sheets are being filed pursuant to Section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1-B, and the procedures prescribed by the Commission in its December 31, 1996 "Order Accepting Tariff Filing Subject to Conditions" in Docket No. RP97-81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97-81-001 and RP01-70-000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected State commissions.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1698 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-176-108]

Natural Gas Pipeline Company of America; Notice of Non-Conforming Agreement

April 6, 2005.

Take notice that on March 31, 2005, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Eighth Revised Sheet No. 414, to become effective May 1, 2005.

Natural states that the purpose of this filing is to update its list of non-conforming agreements. Natural states that it is also filing copies of the Firm Transportation Rate Discount Agreement with The Board of Trustees of University of Illinois.

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.

Comment Date: 5 p.m. eastern time on April 13, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1699 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-272-056]

Northern Natural Gas Company; Notice of Negotiated Rate

April 6, 2005.

Take notice that on March 31, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on April 1, 2005:

37 Revised Sheet No. 66
30 Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement specific negotiated rate transactions with Eagle Energy Partners I, L.P., OGE Energy Resources, Inc., Conoco-Phillips Company, Virginia Power Energy Marketing and WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1694 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-426-023]

Texas Gas Transmission, LLC; Notice of Negotiated Rate

April 6, 2005.

Take notice that on April 1, 2005, Texas Gas Transmission, LLC, (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2005:

Original Sheet No. 54
Sheet No. 55

Texas Gas states that the purpose of this filing is to submit to the Commission a tariff sheet detailing a negotiated rate agreement between Texas Gas and Anadarko Energy Services Company (Anadarko), dated March 24, 2005, to be effective April 1, 2005, through October 31, 2005, under a Firm Transportation (FT) service agreement. This negotiated rate agreement is being submitted in compliance with "Section 38. Negotiated Rates" of the General Terms and Conditions (GT&C) of Texas Gas's tariff and the Commission's modified policy on negotiated rates, *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003).

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1687 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-79-001]

Texas Gas Transmission, LLC; Notice of Refund Report

April 6, 2005.

Take notice that on March 31, 2005, Texas Gas Transmission, LLC, (Texas Gas) tendered for filing its refund report, which details the distribution of the Gas Supply Realignment (GSR).

Texas Gas states that the purpose of the filing is to notify the Commission that GSR refunds had been issued to affected firm customers, and to provide detail regarding how the refunds were calculated and disbursed. Texas Gas states that the GSR refund of \$330,071, plus interest, was issued to affected firm customers on March 22, 2005.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 pm eastern time on April 13, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1690 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05-89-000]

Maine Public Utilities Commission, Complainant v. Central Maine Power Company and Bangor Hydro-Electric Company, Respondent; Notice of Complaint Filing

April 5, 2005.

Take notice that on April 4, 2005, the Maine Public Utilities Commission (MPUC) filed a complaint against Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE), alleging that the currently effective returns on equity (ROE) for CMP and BHE are unjust and unreasonable. MPUC states that it bases its claim on the testimony filed by the

Connecticut Department of Public Utility Control in Docket No. ER04-157-004, *et al.* MPUC request that the Commission: (1) Consolidate its complaint with the proceeding in Docket No. ER04-157-004 *et al.*, (2) set the refund effective date at 60 days after the date of its complaint filing, (3) find that the current ROEs for CMP and BHE are unjust and unreasonable and that the ROEs for both RNS and LNS must be reduced to 8.74 percent or not more than 9.26 percent, and (4) order that the ROEs of the other New England Transmission Owners be reduced to the same extent.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protest must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: April 25, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1704 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05-79-000, *et al.*]

TransCanada Power (Castleton) LLC, *et al.*; Electric Rate and Corporate Filings

April 4, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. TransCanada Power (Castleton) LLC

[Docket No. EL05-79-000]

Take notice that on March 23, 2005, TransCanada Power (Castleton) LLC (TCP Castleton) filed a petition for declaratory order requesting that the Commission find that: (1) TCP Castleton is not a public utility engaged in the sale of energy from the Castleton Facility; and (2) TCP Castleton is not subject to Commission regulation under the Federal Power Act solely as a result of TCP Castleton's status as an exempt wholesale generator pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207).

Comment Date: 5 p.m. eastern time on April 13, 2005.

2. Southern California Edison Company

[Docket No. EL05-80-000]

Take notice that on March 24, 2005, Southern California Edison Company filed a Petition for Declaratory Order concerning transmission facilities in the Antelope Valley/Tehachapi region of California.

Comment Date: 5 p.m. eastern time on April 14, 2005.

3. LG&E Energy Marketing Inc.

[Docket No. ER94-1188-035]

Louisville Gas & Electric Company & Kentucky Utilities Company

[Docket Nos. ER98-4540-004 and ER99-1623-004]

WKE Station Two Inc.

[Docket No. ER98-1278-010]

Western Kentucky Energy Corporation

[Docket No. ER98-1279-006]

Take notice that, on March 29, 2005, LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, WKE Station Two Inc., and Western Kentucky Energy Corporation (collectively, the LG&E Parties) submitted a response to the Commission's March 8, 2005 deficiency letter seeking additional information

regarding LG&E Parties' November 19, 2004 filing in these dockets.

Comment Date: 5 p.m. eastern time on April 19, 2005.

4. Idaho Power Company

[Docket No. ER97-1481-008]

Take notice that, on March 29, 2005, Idaho Power Company submitted a compliance filing pursuant to the Commission's March 3, 2005 Order Accepting Updated Market Power Analysis in Docket No. ER97-1481-003, *et al.*, 110 FERC ¶ 61,219 (2005) to incorporate the language relating to change in status reporting requirements, as adopted in Order 652.

Idaho Power Company states that copies of this filing were served on all parties to this proceeding.

Comment Date: 5 p.m. eastern time on April 19, 2005.

5. Millennium Power Partners, L.P.

[Docket No. ER98-830-011]

Take notice that on March 28, 2005, Millennium Power Partners, L.P. (Millennium) submitted a compliance filing pursuant to the Commission's March 3, 2005 Order in *Millennium Power Partners, L.P.*, 110 FERC ¶ 61,217 (2005), to revise its market-based rate tariff to incorporate the change in status reporting requirements adopted in the Commission's Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. eastern time on April 18, 2005.

6. Avista Corporation; Avista Energy, Inc.; Spokane Energy, LLC; and Avista Turbine Power, Inc.

[Docket No. ER99-1435-010; ER96-2408-022; ER98-4336-011; and ER00-1814-005]

Take notice that on March 29, 2005, Avista Corporation, on behalf of itself and three of its affiliates, Avista Energy, Inc., Spokane Energy, LLC and Avista Turbine Power, Inc. (collectively Avista Entities), filed a notice of change in status pursuant to the Commission's Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Avista Entities state that copies of this filing have been served upon parties on the Commission's official service list for these proceedings.

Comment Date: 5 p.m. eastern time on April 19, 2005.

7. Carthage Energy, LLC; Energetix, Inc.; New York State Electric & Gas Corporation; NYSEG Solutions, Inc.; Rochester Gas and Electric Corporation; PEI Power II, LLC; and South Glens Falls Energy, LLC

[Docket No. ER99-2541-006; ER97-3556-014; ER99-221-009; ER99-220-011; ER97-3553-003; ER01-1764-003; and ER00-262-005]

Take notice that on March 28, 2005, Carthage Energy, LLC (Carthage), Energetix, Inc. (Energetix), New York State Electric & Gas Corporation (NYSEG), NYSEG Solutions, Inc. (NSI), Rochester Gas and Electric Corporation (RG&E), PEI Power II, LLC (PEI2), and South Glens Falls Energy, LLC (SGF) (Triennial Filers) tendered for filing an amendment to their market-based rate authority triennial market report filed on July 12, 2004 in Docket Nos. ER99-2541-005, *et al.* In addition, each of the Triennial Filers also submitted tariff sheets incorporating the change-in-status reporting requirements in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. eastern time on April 18, 2005.

8. Alpena Power Generation, L.L.C.

[Docket No. ER04-1004-004]

Take notice that on March 29, 2005, Alpena Power Generation, L.L.C. (Alpena Generation), in compliance with the Commission's March 1, 2005 Letter Order, 110 FERC ¶ 61,199 (2005), filed revised tariff sheets and information regarding interlocking directorates.

Comment Date: 5 p.m. eastern time on April 19, 2005.

9. New York Independent System Operator, Inc.

[Docket Nos. ER04-1144-004]

Take notice that on March 29, 2005, the New York Independent System Operator, Inc. (NYISO) submitted a progress report concerning its implementation activities associated with the Comprehensive Reliability Planning Process as well as its stakeholder process to develop Phase II of its Planning Process to address economic issues. NYISO states that this progress report is submitted in accordance with the Commission's December 28, 2004 Order, 109 FERC ¶ 61,372 (2004).

The NYISO states that it has served all parties on the official service list in this proceeding. The NYISO also states that it has electronically served a copy of this filing on the official representative

of each of its customers, on each participant in its stakeholder committees, on the New York State Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern time on April 19, 2005.

10. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Power Marketing Inc.

[Docket No. ER04-23-011]

Take notice that on March 22, 2005, Devon Power LLC, Middletown Power LLC, Montville Power LLC and Norwalk Power LLC (collectively, NRG) submitted for filing an affidavit of Robert C. Flexon in support of NRG's March 1, 2005 filing of a statement showing the C-1 and C-2 costs incurred during the period April 1, 2004 through December 31, 2004, submitted in compliance with the Commission's order issued January 27, 2005 in *ISO New England, et al.*, 110 FERC ¶ 61,079 (2005).

Comment Date: 5 p.m. eastern time on April 12, 2005.

11. Diverse Power Incorporated

[Docket No. ER04-444-003]

Take notice that on March 29, 2005, Diverse Power Incorporated (Diverse Power) submitted revisions to its Rate Schedule No. 1 to incorporate the reporting requirements adopted by the Commission in Order No. 652 and to specify that Diverse Power will not make any sales to affiliates without prior Commission approval pursuant to section 205 of the Federal Power Act.

Comment Date: 5 p.m. eastern time on April 19, 2005.

12. Hartford Steam Company

[Docket No. ER04-582-005]

Take notice that on March 28, 2005, Hartford Steam Company filed Original Sheet No. 10 of Rate Schedule FERC No. 1 in compliance with the Commission's Order No. 652, *Reporting Requirement for Changes in Status For Public Utilities With Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005). Hartford Steam Company requests an effective date of March 21, 2005.

Comment Date: 5 p.m. eastern time on April 18, 2005.

13. Marina Energy, LLC

[Docket No. ER05-642-000]

Take notice that on March 28, 2005, Marina Energy, LLC filed a request to withdraw its February 24, 2005 filing in the above-referenced docket number.

Comment Date: 5 p.m. eastern time on April 18, 2005.

14. Commerce Energy Inc.

[Docket No. ER05-737-000]

Take notice that on March 29, 2005, Commerce Energy Inc., (Commerce) submitted a Notice of Succession to inform the Commission that as a result of a name change, Commerce has succeeded to the FERC Rate Schedule of Commonwealth Energy Corporation. Commerce also submitted revised tariff sheets to reflect the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 195 FERC ¶ 61,218 (2003) and the reporting requirements for changes in status adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Commerce states that copies of the filing were served on all parties listed on the service list for Docket No. ER97-4253-000.

Comment Date: 5 p.m. eastern time on April 19, 2005.

15. Western Power Services, Inc.

[Docket No. ER05-738-000]

Take notice that on March 29, 2005, Western Power Services (Western) submitted for filing a Notice of Cancellation of its FERC tariff under which it was authorized to engage in wholesale sale of electricity for resale in interstate commerce at market-based rates.

Comment Date: 5 p.m. eastern time on April 19, 2005.

16. Yoakum Electric Generating Cooperative, Inc.

[Docket No. ER05-739-000]

Take notice that on March 29, 2005, Yoakum Electric Generating Cooperative, Inc. (Yoakum) submitted an application requesting acceptance of its FERC Rate Schedule No. 1, under which Yoakum will make wholesale sales of electric energy and capacity; approval of certain blanket approvals; and approval of certain waivers of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 19, 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1705 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451-001, Minnesota]

SAF Hydroelectric Company, LLC; Notice of Availability of Environmental Assessment

April 6, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (FERC Order No. 486 and 52 FR 47,897) the Office of Energy Projects Staff (staff) reviewed the application for an original license for the Lower St. Anthony Falls Hydroelectric Project, located on the Mississippi River in the city of Minneapolis in Hennepin County, Minnesota, and prepared an environmental assessment (EA) for the project. The project would occupy 2.26 acres of Federal lands owned by the U.S. Army Corps of Engineers (Corps).

In this EA, the staff analyzes the potential environmental effects of the proposed project and concludes that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA and 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 "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 Online Support at FERCOnlineSupport@ferc.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 date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Lower St. Anthony Falls Project, P-12451" to all comments. For further information, please contact Monte TerHaar at (202) 502-6035 or at monte.terhaar@ferc.gov.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1686 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 5, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12542-000.

c. *Date Filed:* September 22, 2004.

d. *Applicant:* Hydrodynamic, LLC.

e. *Name of Project:* Upper Turnbull Project.

f. *Location:* The proposed project would be located on the U.S. Bureau of Reclamation's existing Greenfield

Irrigation District canal system, using irrigation diversions from the Sun River below Gibson Dam, at the canal and drop structure identified in item K below, in Teton and Cascade Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Mr. Roger Kirk, Hydrodynamics, LLC, PO Box 1136, Bozeman, MT 59771-1136, (406) 587-5086.

i. *FERC Contact:* Mr. Robert Bell, (202) 502-6062.

j. *Deadline for filing motions to intervene, protests and comments:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P-12542-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12539-000, Date Filed: September 9, 2004, Date Issued: December 31, 2004, Due Date: March 2, 2005.

l. *Description of Project:* The proposed project would consist of: (1) A diversion structure, at crest elevation 4,322 feet mean sea level (msl), on the Spring Valley Canal, (2) a 1400-foot-long, 8-foot Diameter penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity 4 megawatts, (4) a tailrace returning flows to the canal at elevation 3,818 feet msl, (5) a ¼-mile-long, 69-KV transmission line and (6) appurtenant facilities. The applicant estimates the project would have an average annual generation of 16.2 gigawatt-hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE.,

Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1703 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04-9-005]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice of Technical Conference

April 6, 2005.

1. In an order issued on October 8, 2004, the Commission set forth a deadline for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act for FY 1998-2004. The Commission required the OFAs to submit their costs by December 31, 2004, using the final version of the cost reporting form for this purpose, issued on August 13, 2004, and using the new procedures discussed in the body of the order. The order also announced that a technical conference would be held for

the purpose of initializing the review process of the submitted cost forms.

2. Due to the scope of the new reporting guidelines, some agencies were unable to compile their cost reports by the December 31, 2004, deadline. Therefore the Commission waived the deadline and allowed later submissions. With all cost reports received, the Commission now proceeds with the review process.

3. The Commission will hold a technical conference for reviewing the submitted OFA costs. The purpose of the conference will be for OFAs and licensees to discuss costs reported in the forms and any other supporting documentation or analyses.

4. The Conference will be held on April 26, 2005, in Hearing Room 1 at the Commission's headquarters at 888 First Street, NE., Washington, DC. The conference will begin at 10 a.m. (E.S.T.). An agenda may be viewed on the Commission's Web site by April 14, 2005.

5. The technical conference will also be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact the Ace-Federal Reporters, Inc., at 202-347-3700, or 1-800-336-6646. Two weeks after the post-forum meeting, the transcript will be available for free on the Commission's e-library system. Anyone without access to the Commission's Web site or who has questions about the technical conference should contact Anton Porter at 202-502-8728, e-mail at anton.porter@ferc.gov.

6. 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 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-1702 Filed 4-11-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ORD-2005-0010, FRL-7897-8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Population-Based Pilot Study of Children's Environmental Health in Support of the National Children's Study, EPA ICR Number 2187.01**AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 13, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD-2005-0010, to EPA online using EDOCKET (our preferred method), by email to oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Auby, Environmental Protection Agency, Office of Information Collection, Office of Environmental Information, 1200 Pennsylvania Ave., NW., Mail Code 28221T, Washington, DC 20460; telephone number: (202) 566-1672; fax number: (202) 566-1753; email address: auby.susan@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number ORD-2005-0010, which is available for public viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Office of Research and Development Docket is (202) 566-1752. An electronic version of the public docket is available through

EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

Affected entities: Entities potentially affected by this action are women aged 18-40 years, pregnant women, their husbands or partners, and their children who live in selected areas of North Carolina.

Title: Population-based pilot study of children's environmental health in support of the National Children's Study.

Abstract: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. The proposed study will be conducted by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, U.S. EPA. The U.S. EPA will conduct this research in partnership with the National Children's Study (NCS) Program Office

at the National Institute of Child Health and Human Development (NICHD) as well as the other lead agencies of the NCS: the Centers for Disease Control and Prevention (CDC) and the National Institute of Environmental Health Sciences (NIEHS). The purpose of this study is to pilot test protocols, policies and procedures for the NCS with the goal of improving the efficiency of study procedures and enhancing the likelihood of successful implementation in probability-based population study locations across the US. In particular, this study will test procedures for population-based sampling and subject recruitment, test proposed study logistics and estimates of subject burden, and evaluate data collection strategies including interviews and acquisition of biologic and environmental samples. Under the Children's Health Act of 2000, NICHD is charged with leading a cooperative federal effort with EPA and other agencies of the Department of Health and Human Services to plan and implement a comprehensive study of children's environmental health. Further details on the NCS, including the Study Plan, can be found at: <http://www.nationalchildrensstudy.gov>. Population-based sampling was a strong recommendation from the NCS Federal Advisory Committee and an expert panel workshop on sampling held in March 2004 recommended a pilot test of sampling strategies. Given the scale and complexity of the proposed NCS strategy for recruiting pregnant women and women attempting pregnancy, this pilot study will address uncertainties related to sampling and recruitment.

Two locations will be selected (one urban and one rural), each of which approximately corresponds to a NCS Primary Sampling Unit (PSU). Within each location, two geographic areas will be defined as "segments." The NCS is interested in exploring ways of defining segments that may lead to more natural communities, so two of the segments will be drawn based on elementary school catchment areas in addition to two segments drawn using more traditional census boundaries. Comparing census-based segments to school-based segments, we plan to evaluate the time, cost, and efficiency of collecting community measures; and the impact on recruitment and community engagement. We plan to evaluate strategies for enumerating the population such as counting and listing, as well as the use of commercial postal lists.

Once the segments are enumerated, we plan to visit approximately 10,000 occupied households (approximately

2,500 per segment) to identify any female occupants who may be eligible for the pilot study. The initial household visit is expected to take up to 5 minutes per household, and any adult household member can provide the necessary information. Each potentially eligible woman in the household will then be administered a 15-minute screening interview to determine her eligibility for the study. Like the NCS, this pilot will recruit women prior to pregnancy who are planning to become pregnant or who are likely to become pregnant and women who are in the first trimester of pregnancy at the time of screening. This pilot will also enroll women at screening who are pregnant but past the first trimester and a small number of women may be recruited during the birth hospital stay. The pilot study recruitment and enrollment procedures include up to five household visits, determining if a lower number of visits would achieve optimal efficiency. Each segment will have a consistent visit schedule protocol to avoid confusion. Like the NCS, eligible women who are planning pregnancy or likely to become pregnant will be aged 18–40 years. For the pilot study, women who are currently pregnant are eligible if they are 18 years of age or older. Since the sample is based on residence at delivery, only women who plan to reside in the same area at delivery (*i.e.*, not move out of the segment before giving birth) will be eligible. The household screening phase of the project is expected to take approximately four months to complete.

We plan to follow the visit schedule proposed in the NCS Study Plan. Women with a high likelihood of pregnancy (*i.e.*, planners) will be visited in their homes approximately every two months for up to four visits (or until they conceive) with short telephone interviews in the intervening months. Women with a moderate likelihood of pregnancy will have one home visit and short telephone interviews every three months to update pregnancy status. Women with a low likelihood of pregnancy will be contacted by telephone twice—at six months and at one year after enrollment—to determine if their pregnancy status has changed. (These three groups are defined by the NCS Study Plan as high, moderate, and low risk of pregnancy, respectively.)

During pregnancy, we plan to make a home visit in the first trimester and a clinic visit in both the second and third trimester. At each clinic visit, we plan to complete a brief interview and to conduct various clinical exams or tests (such as ultrasound exams, venous

blood draw, etc.). In addition to these three pregnancy visits, women who are enrolled early (before 8–10 weeks of pregnancy) may be invited to an additional study clinic visit for an oral glucose tolerance test.

As with the NCS, we plan to attempt to collect a number of biologic specimens at delivery. Many of these specimens (*e.g.*, cord blood, meconium) will involve minimal or no burden to the mother or infant. After birth, we plan to visit the family in the home when the child is 1 month, 6 months, 12 months, and 18 months of age. At each home visit we anticipate collecting interview data; biologic specimens that are non-invasive (*e.g.*, nails, hair) or minimal risk (such as venous blood drawn by a trained phlebotomist); and environmental samples (such as dust wipes).

The content of the interviews and analytic plan for the biologic and environmental samples collected are focused on factors related to child growth and development. Questions will be asked about diet and activity as well as demographic information, medical history, occupational and other exposures, alcohol and smoking (including environmental tobacco smoke exposure), mental health and feelings about pregnancy and parenthood, social support, pets, neighborhood characteristics, and measures of child health and development. Specific data elements are intended to capture some of the domains that will be measured in the NCS which has a broad definition of environment including biologic, chemical, physical, and psycho-social. We expect to interview subjects regularly about their feelings about study participation to capture the qualitative assessments of acceptability and enhance the lessons that can be learned which may enhance the successful implementation of the NCS.

The EPA would like to solicit comments to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The public reporting and recordkeeping burden for this collection of information varies depending on the eligibility and pregnancy status of women at the time of enrollment. Women who are not pregnant at the time of enrollment will have varying burden levels depending on their time to pregnancy and their likelihood of pregnancy (as described above). Women who are enrolled in the pilot study while pregnant or at delivery will be folded into the visit schedule at the appropriate point. Detailed estimates regarding the number of potential respondents and burden associated with each visit are provided in the EDOCKET. Table 1 provides the average burden hours per respondent and the total cumulative burden hours for the entire study period (approximately 3 years and 1 month).

Approximately 5 minutes per household is required to determine potentially eligible occupants. Potentially eligible women are asked to complete a 15-minute screening interview. The estimated total burden for a fully participating woman ranges from 8 hours (for a woman enrolled at delivery) to 21 hours (for a “high likelihood” woman who receives all contacts in the preconception period) over a three year period. The burden for men is somewhat more consistent because they only receive one visit in each of the preconception, pregnancy, and childhood visit periods; each visit is approximately 1 hour. The burden for children ranges from 10 minutes at the birth visit to approximately 2 hours for full participation up to 18 months of age.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

TABLE 1.—ESTIMATED AVERAGE AND TOTAL BURDEN FOR ALL CONTACTS

Type of respondent	Estimated number of respondents	Average burden hours per respondent	Estimated total burden hours	Total burden cost
Household Unit	10,000	0.1	1,000	² \$16,070
Women Screened, Not Enrolled	4,346	0.3	1,303	² 21,070
Women Screened and Enrolled.				
High likelihood of pregnancy	167	6.2	1,786	² 28,880
Moderate likelihood of pregnancy	572	3.7	2,527	² 40,862
Low likelihood of pregnancy	1,797	1.5	3,000	² 48,510
Pregnant at enrollment ¹	169	4.0	1,952	² 31,564
Enrolled at delivery	35	7.1	248	² 4,010
Men	1,074	0.8	1,286	² 20,795
Children	406	1.5	603	³ 3,105

¹ Includes 48 volunteers assumed to be pregnant at enrollment.

² \$16.17/hour. Source: Bureau of Labor Statistics, State Wage Data for North Carolina. http://www.bls.gov/oes/current/oes_nc.htm.

³ \$5.15/hour (minimum wage).

Dated: March 29, 2005.

Rebecca L. Calderon,

Director, Human Studies Division.

[FR Doc. 05-7334 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7898-1]

Proposed CERCLA Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Greenberg Salvage Yard, Murphysboro, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622 (h), notice is hereby given of a proposed administrative settlement by consent, pursuant to CERCLA 122(h), 42 U.S.C. 9622(h) concerning Cox Parts & Services, Inc. and Thomas D. Cox Trucking, Inc. and the Greenberg Salvage Yard Site.

The settlement requires that the Settling Parties shall pay to the EPA Hazardous Substance Superfund in eleven monthly installments the principal sum of \$13,157 plus interest as defined in the Agreement for Recovery of Past Response Costs. The settlement includes EPA's covenant not to sue the Settling Parties pursuant to 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover Past Response Costs. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under the

Agreement. U.S. EPA is proposing this Agreement because it provides reimbursement to U.S. EPA for part of its past costs at the Greenberg Salvage Yard Site.

For thirty (30) days following the date of publication of this notice, the agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The response to any comment received will be available for public inspection at the Superfund Division Record Center, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604-3590.

DATES: Comments must be submitted on or before May 12, 2005 pursuant to 122(i) of CERCLA, 42 U.S.C. 9622(i).

ADDRESSES: Comments should be addressed to Virginia Narsete, Public Affairs Specialist, Superfund Division, Emergency Response Branch, Mail Code SE-5J, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590, and should reference the Greenberg Salvage Yard site, Murphysboro, Illinois. The settlement agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division Record Center (address above), or a copy of the AOC may be obtained from Virginia Narsete.

FOR FURTHER INFORMATION CONTACT: Virginia Narsete, Public Affairs Specialist, Superfund Division, Emergency Response Branch, Mail Code SE-5J, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590 or call (312) 886-4359.

SUPPLEMENTARY INFORMATION: The Greenberg Salvage Yard Superfund Site, encompassing two parcels of approximately 2.34 acres, located in Murphysboro, Jackson County, Illinois is generally designated by the following property description: The Site's northern parcel is bordered to the north by Thomas D. Cox Trucking, Inc., to the east by the American Legion and to the west by private residences. The Site's southern parcel is bordered by a lumber yard and to the east and west by private residences. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to 104 of CERCLA, 42 U.S.C. 9604. A lead stabilizing agent was mixed with lead-contaminated soil at the Site to treat the soil to below hazardous waste characteristic levels for lead. Then the soil was transported off the site for disposal as non-hazardous waste. A total of 12,050.6 tons of treated/low level contaminated lead soil were disposed of at an off-site disposal facility. The Site was then backfilled with clean soil. The settling parties are: Cox Parts and Services, Inc. and Thomas D. Cox Trucking, Inc. The Settling Parties shall be jointly and severally liable for all obligations imposed upon them under the Agreement for Recovery of Past Response Costs, 122(h)(1) of CERCLA 42 U.S.C. 9622(h)(1). Based upon the information submitted by the parties, EPA determined that each Settling Party has limited financial ability to pay for response costs incurred at the Site. However, the Site property was owned by Cox Parts and Services, Inc. and was sold after the removal action was completed. The settlement represents the amount of profit received by Cox Parts and Services, Inc. from the sale of the property. Settling Parties shall pay to the EPA Hazardous Substance

Superfund the principal sum of \$13,157 plus interest as defined in the Agreement for Recovery of Past Response Costs. Payment shall be made in eleven monthly installments.

Dated: April 1, 2005.

Donald J. Bruce,

Acting Director, Superfund Division.

[FR Doc. 05-7309 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7898-3]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's final action identifying water quality limited segments and associated pollutants in Louisiana to be listed pursuant to Clean Water Act Section 303(d), and request for public comment. Section 303(d) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On March 31, 2005, EPA partially approved and partially disapproved Louisiana's 2002 303(d) submittal. Specifically, EPA approved Louisiana's listing of 442 water body-pollutant combinations and associated priority rankings. EPA disapproved Louisiana's decisions not to list 44 water quality limited segments (or 69 water body-pollutant combinations). EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) List.

EPA is providing the public the opportunity to review its final decisions to add waters and pollutants to Louisiana's 2002 Section 303(d) List, as required by EPA's Public Participation regulations (40 CFR Part 25). EPA will consider public comments and if necessary amend its final action on the additional water bodies and pollutants identified for inclusion on Louisiana's Final 2002 Section 303(d) List.

DATES: Comments must be submitted in writing to EPA on or before May 12, 2005.

ADDRESSES: Comments on the decisions should be sent to Diane Smith,

Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202-2733, telephone (214) 665-2145, facsimile (214) 665-7373, or e-mail: smith.diane@epa.gov. Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 49 water quality limited segments for which EPA disapproved Louisiana's decisions not to list can be obtained at EPA Region 6's Web site at <http://www.epa.gov/earth1r6/6wq/tmdl.htm>, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665-2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit Section 303(d) Lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Louisiana submitted to EPA its listing decisions under Section 303(d) on August 21, 2003, with subsequent corrections submitted on December 10, 2003, and October 19, 2004. On March 31, 2005, EPA approved Louisiana's listing of 442 water body-pollutant combinations and associated priority rankings. EPA disapproved Louisiana's decisions not to list 44 water quality limited segments (or 69 water body-pollutant combinations). EPA identified these additional waters and pollutants

along with priority rankings for inclusion on the 2002 Section 303(d) List. EPA solicits public comment on its identification of 44 additional waters for inclusion on Louisiana's 2002 Section 303(d) List.

Dated: April 5, 2005.

Miguel I Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05-7331 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7898-2]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's final action identifying water quality limited segments and associated pollutants in Louisiana to be listed pursuant to Clean Water Act Section 303(d), and request for public comment. Section 303(d) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On March 31, 2005, EPA partially approved and partially disapproved Louisiana's 2004 303(d) submittal. Specifically, EPA approved Louisiana's listing of 444 water body-pollutant combinations, and associated priority rankings. EPA disapproved Louisiana's decisions not to list 14 water quality limited segments (or 17 water body-pollutant combinations). EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2004 Section 303(d) List.

EPA is providing the public the opportunity to review its final decisions to add waters and pollutants to Louisiana's 2004 Section 303(d) List, as required by EPA's Public Participation regulations (40 CFR part 25). EPA will consider public comments and if necessary amend its final action on the additional water bodies and pollutants identified for inclusion on Louisiana's Final 2004 Section 303(d) List.

DATES: Comments must be submitted in writing to EPA on or before May 12, 2005.

ADDRESSES: Comments on the decisions should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202-2733, telephone (214) 665-2145, facsimile (214) 665-7373, or e-mail: smith.diane@epa.gov. Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 14 water quality limited segments for which EPA disapproved Louisiana's decisions not to list can be obtained at EPA Region 6's Web site at <http://www.epa.gov/earth1r6/6wq/tmdl.htm>, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665-2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit Section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Louisiana submitted to EPA its listing decisions under Section 303(d) on April 1, 2004 with subsequent corrections submitted on June 3, 2004 and October 19, 2004. On March 31, 2005, EPA approved Louisiana's listing of 444 water body-pollutant combinations and associated priority rankings. EPA disapproved Louisiana's decisions not to list 14 water quality limited segments and associated pollutants (or 17 water

body-pollutant combinations). EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2004 Section 303(d) List. EPA solicits public comment on its identification of 14 additional waters and associated pollutants for inclusion on Louisiana's 2004 Section 303(d) List.

Dated: April 5, 2005.

Miguel I Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05-7332 Filed 4-11-05; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

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 April 14, 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: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. 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

- March 10, 2005 (Open and Closed)

B. Reports

- Corporate/Noncorporate Report
- Federal Funds to Funding Corporation's Contingency Funding Plan
- Core Cooperative Principles and their Implementation by System Associations

Closed Session *

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

- OSMO Quarterly Report—Part 2

Dated: April 7, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05-7417 Filed 4-8-05; 1:19 pm]

BILLING CODE 6705-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034: 1. SouthernTrust Bancshares, Inc., Goreville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of SouthernTrust Bank, Goreville, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272: 1. Texas Brand Bancshares, Inc., Garland, Texas and TBB Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100

percent of the voting shares of Brand Bank, Garland, Texas.

Board of Governors of the Federal Reserve System, April 6, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-7275 Filed 4-11-05; 8:45 am]

BILLING CODE 6210-01-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., Monday, April 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, April 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-7449 Filed 4-8-05; 2:39 pm]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-209]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from October through December 2004. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT:

William Cibulas, Jr., Ph.D., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 498-0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on November 29, 2004 [69 FR 69371]. This announcement is the responsibility of ATSDR under the regulation "Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553-6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between October 1, 2004, and December 31, 2004, public health assessments were issued for the sites listed below:

NPL and Proposed NPL Sites

Alabama

Capitol City Plume—(PB2005-101285)

Maryland

Curtis Bay Coast Guard Yard (a/k/a U.S. Coast Guard, Hawkins Point Road)—(PB2005-102124)

New Hampshire

Troy Mills Landfill—(PB2005-101284)

New York

Former Mackenzie Chemical Works Site Central Islip—(PB2005-100581)

Old Roosevelt Field Contaminated Groundwater Area—(PB2004-106415)

Texas

Conroe Creosoting Company—(PB2005-101286)

Non-NPL Petitioned Sites

Connecticut

Community Concerns Evaluation (Cheshire)—(PB2005-101287)

Florida

Royal Oaks Community—(PB2005-100325)

Georgia

Morgan Falls Municipal Solid Waste Landfill (a/k/a Morgan Falls Landfill)—(PB2005-101078)

Dated: April 5, 2005.

Georgi Jones,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 05-7284 Filed 4-11-05; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention;

[Program Announcement 05052]

Information Interchange and Technical Assistance for Human Immunodeficiency Virus (HIV) Prevention; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to support an information exchange program among mayors and other local and state government officials concerning HIV prevention; HIV prevention program and policy development; and the provision of technical assistance to community-

based organizations (CBOs), local and state health departments, and other public and private sector organizations involved in health promotion and disease prevention activities. The Catalog of Federal Domestic Assistance number for this program is 93.939.

B. Eligible Applicant

Assistance will be provided only to the United States Conference of Mayors (USCM). No other applications are solicited.

The proposed program is in alignment with the USCM mission, and the organization's mission facilitates the successful and expedited implementation of the program proposed under this announcement. The USCM is the official nonpartisan organization of the nation's 1,183 U.S. cities with populations of 30,000 or more. Each city is represented in the Conference by its chief elected official, the mayor. The primary roles of the Conference of Mayors are to: (1) Promote the development of effective national urban/suburban policy; (2) Strengthen federal-city relationships; (3) Ensure that federal policy meets urban needs; (4) Provide mayors with leadership and management tools; and (5) Create a forum in which mayors can share ideas and information. The USCM has 30 key programs, which include a HIV/AIDS program. The Conference was one of the first national organizations to respond to the HIV/AIDS epidemic and has worked closely with the CDC by offering prevention grants, prevention publications, and technical assistance.

Market research findings indicate that the USCM is the only umbrella organization exclusively for all mayors nationwide. USCM has the access to, and long-standing relationships with, the mayors, and the infrastructure to successfully conduct the proposed program activities. The organization's existing relationships and access to mayors facilitate immediate implementation of program activities because the organization does not have to establish contacts and develop relationships with the Mayors. In addition, through its affiliate, The U.S. Conference of Local Health Officials, with a membership comprised of approximately 2,000 local health officials, the USCM has established networks with local health officials. The USCM was created specifically to represent this wide variety of local organizations and community officials to the Federal government and other national organizations, and is unique in its role as a liaison between these officials. The organization has served as a policy-development and capacity-

building organization in intergovernmental affairs for more than 65 years and has, as one of its major objectives, the sharing of information between local governments and federal agencies.

The USCM is currently funded under RFA 00054, entitled, "Information Interchange and Technical and Financial Assistance for HIV Prevention."

C. Funding

Approximately \$1,300,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before June 1, 2005, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone: 770-488-2700.

For program technical assistance, contact:

Qairo Ali, Project Officer, 1600 Clifton Road, NE., Mailstop E-35, Atlanta, Georgia 30333, Telephone: 404-639-5224, e-mail: cda1@cdc.gov.

For financial, grants management, or budget assistance, contact: Roslyn Curington, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2767, e-mail: zlp8@cdc.gov.

Dated: April 6, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*

[FR Doc. 05-7281 Filed 4-11-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Capacity Building Assistance To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for High-Risk Racial/Ethnic Minority Subpopulations

Announcement Type: New.

Funding Opportunity Number: RFA 05051.

Catalog of Federal Domestic Assistance Number: 93.939.

Application Deadline: May 27, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act, 42 U.S.C. Sections 241 and 247b(k)(2).

Purpose: The purpose of this announcement is to provide financial assistance to non-governmental HIV prevention organizations to provide capacity building assistance (CBA), including training and technical assistance (TA), to adapt, tailor and implement science-based, behavioral HIV prevention interventions specifically targeting high-risk racial/ethnic minority subpopulations as demonstrated by high-prevalence epidemiological evidence and other concrete quantitative and qualitative data. The minority subpopulations are migrant workers, transgender individuals, and youth in non-school settings, including lesbian/gay/bisexual/transgender and questioning (LGBTQ) youth.

The term "capacity building assistance" or "CBA" means the provision of information, TA, training, and technology transfer for individuals and organizations to improve the delivery and effectiveness of HIV prevention services. CBA does not include the delivery of direct client HIV prevention services and interventions.

CBA provided must be consistent with the Centers for Disease Control and Prevention's (CDC's) Advancing HIV Prevention Initiative (AHP), Replicating Effective Programs (REP), Diffusion of Effective Behavioral Interventions (DEBI), the Compendium of Effective Behavioral Interventions, and other CDC-supported strategies for specific high-risk racial/ethnic minority subpopulations.

As effective interventions and adaptation and tailoring guidance are developed, future funding cycles will integrate the new science.

For migrant workers, the interventions and public health strategies should be consistent with CDC-supported strategies for specific high-risk racial/ethnic minority subpopulations. Examples include the community health outreach worker (CHOW) model (also referred to as Promotores/as, lay health advisors, community health advisor networks or peer educators), Real AIDS Prevention Project (RAPP), other interventions from REP and DEBI which are appropriate for migrant worker populations.

For youth in non-school settings, a number of evidence-based, scientifically tested behavioral interventions have been identified specifically for high-risk youth, including Street Smart (for

homeless and runaway teens); Teens Linked to Care (TLC) (for HIV-positive persons ages 13–24); and Focus on Kids (for out-of-school African-American teens in poverty settings) [Stanton *et al.*, (1996) Archives of Pediatrics and Adolescent Medicine, 150 (4), 363–372]. All of the interventions for youth supported by CDC contain abstinence education, and comply with the ABC Approach to HIV Prevention—Information on HIV prevention methods (or strategies) can include abstinence, monogamy (*i.e.*, being faithful to a single sexual partner), or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

Note: For this program announcement, youth are defined as individuals between the ages of 13 to 24 years who are at high risk for HIV infection. Interventions for youth at high risk are limited to out-of-school youth in non-school settings. CBA providers are expected to remind youth-focused community-based organizations (CBO) that they should be familiar with and adhere to their own state's rules and regulations related to providing HIV prevention information to youth (*e.g.*, the age requirement for access to services with or without parental consent).

Science-based behavioral HIV prevention interventions listed in the Procedural Guidance for Selected Interventions and Strategies for Community-Based Organizations, REP and DEBI include: Recruitment and retention; counseling, testing and referral (CTR); prevention case management (PCM); and partner counseling, testing and referral services (PCTRS).

For information on the Procedural Guidance for Selected Interventions and Strategies for Community-Based Organizations mentioned above, visit the following Internet address: http://www.cdc.gov/hiv/partners/pa04064_cbo.htm.

For information on the Compendium of Effective Behavioral Interventions, visit the following Internet address: <http://www.cdc.gov/hiv/pubs/hivcompendium/HIVcompendium.htm>

The term “adapt” refers to changes in the target population or venue in which an intervention takes place. The term “tailor” refers to changes in: (1) The health message or activity; (2) the way the message is delivered or by whom; and (3) the timing of the message. TA is training to adapt, tailor and evaluate science-based behavioral HIV prevention interventions for the specific racial/ethnic/cultural high-risk minority subpopulations of migrant workers, transgender individuals, or youth in

non-school settings, including LGBTQ youth.

Adaptation and tailoring of DEBI products and public health strategies for specific high-risk racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth, must be culturally and linguistically appropriate. Fidelity of all interventions and public health strategies must be maintained by adhering to their specific core elements. This includes adapting and tailoring all training curricula and written materials on each intervention selected, development of a national marketing and diffusion plan for the adapted and tailored interventions, and the provision of CBA to implement adapted and tailored interventions.

This program addresses the “Healthy People 2010” focus area of HIV. This program also addresses the goals stated in CDC's HIV Prevention Strategic Plan through 2005, which can be found at <http://www.cdc.gov/hiv/partners/psp.htm>; and Advancing HIV Prevention: New Strategies for a Changing Epidemic at <http://www.cdc.gov/hiv/partners/ahp.htm>.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP):

1. Decrease the number of persons at high risk for acquiring or transmitting HIV infection.

2. By 2010, increase by 13 percent the proportion of HIV-infected people who know they are infected, as measured by the proportion diagnosed before progression to AIDS (Baseline: 76 percent in 2000; Target for 2010: 85 percent).

3. By 2010, increase to at least 80 percent the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services, as measured by those who report having received some form of medical care within three months of their HIV diagnosis (2001 Baseline: 79 percent).

4. Strengthen the capacity to develop and implement effective HIV prevention interventions.

CBA developed under this program will be categorized as Strengthening Interventions for HIV Prevention (designated as Focus Area [FA] 2) in the CBA model, as referenced in Attachment I.

Program Goals: The goal for this program is to strengthen interventions for HIV prevention by improving the capacity of CBOs and health departments to implement, improve, and evaluate HIV prevention

interventions specifically targeting high-risk racial/ethnic minority subpopulations. The minority subpopulations are migrant workers, transgender individuals, and youth in non-school settings, including lesbian/gay/bisexual/transgender and questioning (LGBTQ) youth.

This announcement is only for non-research activities supported by CDC. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC website at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>.

Activities: Awardee activities for this program are as follows: All applicants are required to implement awardee activities by developing process objectives and activities for the following:

1. Provide ongoing individualized CBA to CDC's directly funded CBOs, health departments, and health department-funded CBOs in the adaptation, implementation, quality assurance, and evaluation of effective science-based behavioral HIV prevention interventions for high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth. CBA providers will utilize CDC's draft adaptation guidance to: (a) Conduct assessments of needs and community resources; (b) identify and address gaps in CBA services; (c) collaborate with other sources of CBA (including other CDC CBA providers and CBOs specifically receiving CDC's Program Announcement 04064 ADAPT supplemental for adapting and tailoring DEBI interventions); (d) notify, collaborate and coordinate with state and local health departments in the delivery of CBA services within their health jurisdictions; and (e) leverage other federal, state or local resources.

Examples of prevention interventions are health education and risk reduction; outreach capacity and preparation for testing; HIV testing; referrals; prevention and partner counseling; prevention case management; interventions to prevent perinatal transmission; and rapid testing in non-traditional settings, such as correctional facilities and high-risk community venues.

2. Provide CBA to health departments and their funded CBOs on culturally appropriate HIV prevention interventions and strategies for high-risk racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth. This includes: (a) Obtaining and utilizing

input from high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth proposed for this project; and (b) incorporating cultural competency and linguistic and educational appropriateness into all CBA activities.

CBA for HIV prevention may include methods for practicing abstinence, monogamy (*i.e.*, being faithful to a single sexual partner), or safer sex (*i.e.*, using condoms consistently and correctly). These approaches can avoid risk or effectively reduce risk for HIV infection.

Prevention interventions should also include risk reduction and avoidance for co-infections with other sexually transmitted diseases, blood-borne diseases (*i.e.*, Hepatitis B and C), and tuberculosis.

3. Work with CDC program consultants and Science Application Team technical monitors, who are responsible for ensuring fidelity, consistency, and support for the delivery of evidence-based HIV prevention interventions and strategies. With their help, develop collaborative partnerships with the originators of the supported science-based interventions, other social and behavioral scientists, and public health experts to adapt and tailor a minimum of two (2) science-based behavioral interventions for high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth. These partners will be responsible for reviewing all materials produced to ensure fidelity to the original intervention and for collaborating on the delivery of CBA. This includes: (a) Development of adaptation and tailoring materials based on CDC's draft adaptation guidance on each intervention; (b) provision of CBA, including training and TA, on adapting and tailoring science-based behavioral HIV prevention interventions; and (c) development of a national marketing and diffusion plan for the interventions in the CDC's Procedural Guidance and other CDC-supported strategies for specific high-risk, racial/ethnic minority subpopulations. **Note:** Specifically for DEBI interventions, all materials related to the adaptation and tailoring of the interventions will need to be reviewed by CDC program consultants, Science Application Team technical monitors, and original investigators, as appropriate.

4. Collaborate with CDC, CDC-funded CBA and TA providers, and locally based partners and contractors to plan

and deliver CBA that is consistent with the requirements of the DEBI interventions and CDC program requirements (as provided in trainings for grantees) and avoids duplication of services. This includes developing training materials, diffusing best program practices and interventions for HIV-negative and HIV-positive persons, and supporting partners with orientation and training to help them deliver effective and efficient services.

Note: To achieve cost-effectiveness, other partners and experts contracted by CBA providers should be locally based and culturally competent.

5. Core Performance Indicators. To ensure quality programs and to measure progress, all applicants receiving funding are required to report on the following core performance indicators:

(a) Number of CDC-funded CBOs that serve high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth, receiving CBA on adapted and tailored science-based behavioral prevention interventions and public health strategies that increase behaviors that reduce risk for transmission or acquisition of HIV.

(b) Number of health department-funded CBOs that serve high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth, receiving CBA on adapted and tailored science-based behavioral prevention interventions and public health strategies that increase behaviors that reduce risk for transmission or acquisition of HIV.

(c) Number of CDC-funded CBOs that report agreement with timeliness in completion of CBA services.

(d) Number of health department-funded CBOs that report agreement with timeliness in completion of CBA services.

(e) Number of CDC-funded CBOs that receive CBA and, in turn, deliver adapted and tailored interventions and/or public health strategies to high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth.

(f) Number of health department-funded CBOs that receive CBA and, in turn, deliver adapted and tailored interventions and/or public health strategies to high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth.

(g) Number of CDC-funded CBOs, health department-funded CBOs, and other stakeholders serving high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth, receiving CBA on implementing realistic and feasible evaluation efforts of adapted and tailored science-based behavioral prevention interventions.

Applicants will be responsible for the following in response to the performance indicators:

(1) Set baseline, one-year, and four-year target goals (target goals will be negotiated with CDC post-award).

(2) Use performance indicators for the design of a monitoring evaluation plan.

(3) Collect process and outcome monitoring data and report to the CDC.

Applicants, with the substantial involvement of CDC, will be accountable for achieving performance target goals. If an applicant fails to achieve its target, CDC will work with the applicant to determine what steps can be taken to improve performance. CDC involvement may include TA, conditional or restrictive funding. If applicant's performance fails to improve, CDC in accordance with applicable federal regulations may take enforcement actions such as, suspension or termination of the Notice of Award (NoA).

6. Implement an evaluation-monitoring plan based on logic modeling that links outcomes (both short- and long-term) with program activities/processes and the theoretical assumptions/principles of the program performance indicators.

The plan should outline the process and outcome data to be collected, identify sources of information, explain the methods by which information will be collected, and outline the process for analyzing and interpreting information, and using findings for program improvement.

7. Identify the CBA training needs of your own program and staff. Develop and implement a plan to address these needs.

8. Develop protocols that respond to new CBA requests, including submission of notification and completion of forms. Refer all CBA requests outside your scope of work to the CDC CBA coordinator responsible for tracking and assigning CBA requests, following procedures to be provided by CDC.

9. Participate in CDC-coordinated CBA networks to enhance communication, coordination, cooperation, and training.

10. Implement a quality assurance strategy that ensures the delivery of high-quality services.

11. Develop and implement an effective strategy for marketing your CBA services.

12. Report planned group CBA events to the Capacity Building Branch (CBB) Training Calendar, as provided by CDC, for dissemination to HIV prevention partners and constituents.

13. Facilitate the dissemination of information about successful CBA strategies and "lessons learned" through peer-to-peer interactions, meetings, workshops, conference presentations, case studies, and communications with CDC program consultants.

14. Take the Adaptation and Tailoring course provided by the STD/HIV Prevention Training Centers (PTC); follow the adaptation and tailoring guidance document, once it is developed by CDC, and collaborate with CDC behavioral and social scientists in developing adapted and tailored materials for the behavioral interventions.

15. Coordinate with local and state health departments prior to providing CBA services.

16. Attend all post-award training events.

17. Submit materials developed with funding through this program announcement to the CDC National Prevention Information Network (NPIN) for access by the public free of charge and dissemination by NPIN.

18. Check with the CDC NPIN to determine if suitable materials are already available. For further information on NPIN services and resources, contact NPIN at 1-800-458-5231; visit its website at www.cdcpin.org; or send requests by fax to 1-888-282-7681 (TTY users: 1-800-243-7012).

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

1. Support all funded awardees by coordinating national networks of capacity building providers.

2. Provide consultation and TA in designing, planning, developing, operating, and evaluating activities (such as progress reporting, submitting information for the training calendar, etc.) based on CDC's standards and CDC program requirements. CDC may provide consultation and TA both directly from CDC and indirectly through prevention partners, such as health departments, national and regional minority partners, CBA

partners, trainers, contractors, and other national organizations.

3. Monitor the performance of program and fiscal activities through progress reports, data reporting, site visits, conference calls, and ensuring compliance with federally mandated requirements, such as use of a materials review panel and internal audit procedures.

4. Add or refine performance indicators over the course of the project period. (For additional information on performance indicators, see Application and Submission Information thru NPIN.)

5. Provide up-to-date scientific information and training on the risk factors for transmitting HIV infection among persons living with HIV/AIDS; HIV prevention services for individual and partner counseling, HIV testing, and referral to care and treatment; and proven effective behavioral interventions for people at risk for transmitting HIV or becoming infected.

6. Provide up-to-date information and training on CDC's draft adaptation guidance developed by CDC with input from internal and external researchers, HIV prevention intervention implementers and community advocates.

7. Assist in the development of collaborative efforts with state and local health departments, HIV prevention community planning groups, CBOs that receive direct funding from CDC, and other federally supported organizations providing HIV/AIDS services.

8. Facilitate the exchange of information about successful interventions, program models, and "lessons learned" through grantee meetings, workshops, conferences, newsletters, the Internet, and communications with CDC project officers. CDC will also facilitate the exchange of program information and TA among community-based organizations, health departments, and national and regional organizations.

9. Ensure that any products developed with these funds reflect both cultural competence and sound evidence-based science. These products must first be reviewed and cleared by the original behavioral scientist(s) before submitting them to CDC for clearance.

10. Conduct an overall evaluation of the project.

11. Disseminate CBA Training Calendar of training activities.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this

program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$2,876,000 (This amount is an estimate and is subject to availability of funds.).

Approximate Number of Awards: Six (6).

Approximate Average Award: \$440,000 (This amount is for the first 12-month budget period and includes both direct and indirect costs.).

Floor of Award Range: \$400,000.

Ceiling of Award Range: \$500,000 (This ceiling is for the first 12-month budget period.).

Anticipated Award Date: August 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Four (4) years.

Throughout the project period, CDC's commitment to the continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal government.
- Indian tribal organizations.

III.2. Cost-Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Applicants must provide proof of eligibility as outlined in Section IV.2. of this announcement.

• All applicants will be required to provide CBA within the United States and its Territories.

• Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

• Governmental, municipal agencies or affiliates of governmental or municipal agencies (e.g., health departments, school boards, public hospitals) are not eligible to apply.

• Organizations currently receiving more than one award for capacity building assistance from CDC's Capacity Building Branch are not eligible to apply.

• A minimum of two interventions or CDC-supported strategies, listed in the "Purpose" section, must be adapted and tailored for high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth. For additional information about interventions and CDC-supported strategies, please visit: http://www.cdc.gov/hiv/partners/pa04064_cbo.htm and <http://www.cdc.gov/hiv/pubs/hivcompendium/HIVcompendium.htm>.

• Preference will be given to organizations that provide evidence of having previously adapted and tailored interventions listed under the "Purpose" section for migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth.

• CDC may allocate additional funding to this program announcement to provide CBA as described in this announcement to reach organizations specifically targeting underserved Latino/a youth at risk for HIV and STDs (i.e., high-risk runaway Latino/a youth engaging in survival activities such as sex in exchange for drugs, money, shelter, or food).

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 5161-1.

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at www.grants.gov.

Application forms and instructions are available on the CDC website, at the following Internet address:

www.cdc.gov/od/pgo/forminfo.htm.

If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

To request an application kit (which includes the request for application, required forms, supplemental information, CBA Guidelines, and other information), contact CDC's National Prevention Information Network (NPIN) at 1-800-458-5231; visit its website at <http://www.cdcpin.org>; or send requests by fax to 1-888-282-7681 (TTY users: 1-800-243-7012). This announcement and associated forms can also be found on the CDC Internet home page, <http://www.cdc.gov>. Click on Funding Opportunities then Grants and Cooperative Agreements.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 40 pages (excluding budget, appendices and attachments). If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point un-reduced.
- All material must be typewritten; single-spaced.
- Paper size: 8.5 x 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Program announcement title and number must appear on each page of the application.
- Number each page sequentially, including appendices and attachments, and provide a complete table of contents to the application, its appendices and attachments.

Narrative. Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Abstract

Please provide a brief four-page summary of the proposed program activities, including the following information:

- a. A description of the high-risk subpopulation of migrant workers,

transgender individuals, or youth in non-school settings, including LGBTQ youth, for whom you propose to adapt and tailor interventions or CDC-supported strategies.

b. A description of all the science-based behavioral interventions or CDC-supported strategies you propose to adapt and tailor.

c. A description of your strategy that includes: (1) All interventions previously adapted; (2) the proposed overall marketing and diffusion plan; (3) the overall evaluation plan; and (4) the proposed plan to deliver CBA nationally.

d. A description of your organization's three-year record of experience providing CBA to consumers that serve a major racial/ethnic minority population listed above or of providing direct HIV prevention services to a major racial/ethnic minority population.

2. Program Plan

The program plan should include the following:

a. Proposed Plan

A description of your proposed plan for building capacity for adapting, tailoring and implementing interventions listed in the "Purpose" section of this announcement. In addition, include a description of the HIV prevention interventions you have previously adapted and tailored, including training and TA delivered. Include epidemiological evidence and other quantitative and qualitative data to support your proposed program plan.

b. Objectives

What are your proposed specific, measurable, appropriate, realistic and time-phased (SMART) objectives to address the awardee activities?

c. Activities

List and describe the proposed activities that relate to each of the objectives listed above.

d. Timeline

Provide a time line and list staff responsible for accomplishing and implementing activities in the first year.

3. Program Experience

a. Describe your organization's program experience as it relates to providing CBA nationally, including training and TA on adapting, tailoring, marketing and evaluating science-based behavioral HIV prevention interventions.

b. Describe the methods and recipients of CBA services previously provided by your organization.

c. Describe your organization's program experience collaborating with behavioral science researchers as well as other HIV prevention agencies, including state and local health departments.

d. Describe your organization's program experience in providing CBA that responds effectively to the cultural, gender, environmental, social, and linguistic characteristics of your proposed high-risk subpopulation of migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth. In answering this question, describe the types of services provided and list any culturally, linguistically, and developmentally appropriate curricula and materials that your organization has adapted or developed.

4. Organizational Capacity

a. Indicate where the proposed program will be located within the organization (e.g., within the Office of the Executive Director, the Health Services Department, the HIV Prevention Section/Department, etc.).

b. Describe your fiscal management system and how it functions.

c. Describe your human resource management system and how it functions.

d. Describe your Management Information System (MIS), including functional role and software assets.

e. Summarize how the systems and assets described above will be used to support and manage the proposed program.

f. Provide the number of your full-time employees (FTEs) and describe their expertise related to social/behavioral science, curriculum development, training, marketing, and evaluation.

5. Evaluation Monitoring Plan

a. Provide baseline, one-year interim and four-year overall target performance goals based on the core performance indicators.

b. Describe the process and outcome data you will collect. Note: Data collected must relate to your objectives and the performance indicators.

c. Describe the methods for collecting, analyzing, interpreting, and reporting your process and outcome data.

d. Describe the plans for using your process and outcome data to improve the program.

6. Budget and Staffing Breakdown and Justification (Not Included in Narrative Page Limit)

a. Provide a detailed budget for each proposed activity. Justify all operating

expenses in relation to the planned objectives and related activities. CDC may not approve or fund all proposed activities. Be precise about the justification for each budget item and itemize calculations wherever appropriate.

b. For each contract and consultant contained within the application budget, describe the type(s) of organizations or parties to be selected and the method of selection; identify the specific contractor(s), if known; and describe the expertise related to behavioral science, curriculum development, training, marketing, and evaluation. Describe services to be performed, and justify the use of a third party to perform these services; provide a breakdown of and justification for the estimated costs of the contractors and consultants; specify the period of performance; and describe the methods to be used for contract monitoring.

c. Provide a job description for each position, specifying job title, function, general duties, activities and expertise related to behavioral science, curriculum development, training, marketing, and evaluation. Also provide salary range or rate of pay, and the level of effort and percentage of time, to be spent on activities that would be funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, his/her name and resume should be included in the appendix section. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide their job descriptions and expertise related to behavioral science, curriculum development, training, marketing, and evaluation.

7. Proof of Eligibility

Applicants must complete the following section on proof of eligibility, including providing the following documents as appropriate. Include eligibility documentation as "Attachment A."

Applications without the required documentation will be considered non-responsive.

• CBA developed under this program announcement will be delivered to CBA consumers serving one or more of the four major racial/ethnic populations as follows:

- Black/African American
- Hispanic/Latino
- Asian/Pacific Islander
- American Indian/Alaska Native
- Documentation that your

organization has the specific charge from its executive board or governing

body to operate nationally within the United States and its Territories. Documentation should include a copy of the statement from your organization's Articles of Incorporation, Bylaws, or Board Resolution.

• A copy of the current, valid Internal Revenue Service (IRS) determination letter of your organization's 501(c)3 tax-exempt status.

• Evidence that your organization has been in operation for three years as documented by annual agency reports, a board resolution, or other documentation.

• Evidence that your organization has a three-year record of experience, as documented by annual agency reports, a board resolution, or other documentation, in the following:

1. Providing CBA to CBOs and health departments on adapting, tailoring and implementing science-based behavioral HIV prevention interventions for high-risk, racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings including LGBTQ youth for which you are applying.

2. Providing CBA to CBOs and health departments that serve a major racial/ethnic minority population(s) listed above, or providing direct HIV prevention services to a major racial/ethnic minority population. In order to enhance program efficacy and facilitate learning, applicants must demonstrate cultural competence, including access to and credibility with the targeted populations mentioned above.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes curriculum vitae, resumes, organizational charts, letters of support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711.

For more information, see the CDC website at: <http://www.cdc.gov/od/pgo/funding/pubcomm.htm>. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: May 27, 2005.

Explanation of Deadlines:

Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at www.grants.gov. Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to www.grants.gov. Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the

application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications and to receive instructions on your state's process. Click on the following link to get the current SPOC list: <http://www.whitehouse.gov/omb/grants/spoc.html>.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds available under this announcement must:
 - a. Support CBA that improves the capacity of the CBOs to implement, improve, and sustain programs that support the delivery of effective HIV prevention services for high-risk, racial/ethnic minority sub-populations.
 - b. Support CBA that gives priority to CBOs directly funded by CDC, followed by CBOs funded by state and local health departments.
 - c. Not supplant or duplicate existing funding.
 - d. Not be used to provide direct provision of health education and risk reduction and avoidance (HERR) services or patient care, including substance abuse treatment, medical treatment, or medications.
 - e. Not be used to support the cost of developing applications for other federal funds.
- Organizations receiving award must directly provide the majority of CBA services by their employed staff.

Note: All work provided by subcontractors is subject to approval and the applicant may not receive an award if proposed subcontractors are providing the majority of CBA services.

Funding estimates and project period may change based on the availability of funds, scope of work, and quality of the applications received, appropriateness and reasonableness of the budget

justifications, and proposed use of project funds.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Guidance for completing your budget can be found on the CDC website, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV.6. Other Submission Requirements

Application Submission Address: CDC strongly encourages applicants to submit electronically at: www.grants.gov. You will be able to download a copy of the application package from www.grants.gov, complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submission will not be accepted. If you are having technical difficulties in Grants.gov, they can be reached by e-mail at www.support@grants.gov or by phone at 1-800-518-4726 (1-800-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that you submit your grant application using Microsoft Office products (e.g., Microsoft Office, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA# 05051, CDC Procurement and Grants Office,

2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Program Plan (40 Points)

- a. Is the program based on high-prevalence epidemiological evidence and other concrete quantitative and qualitative data? (10 points)
- b. Are the proposed program objectives specific, measurable, appropriate, realistic, and time-phased? (10 points)
- c. What is the likelihood that the proposed program activities will accomplish the proposed program objectives? (10 points)
- d. Is the timeline feasible? (10 points)

2. Program Experience (20 Points)

Is the applicant's program experience relevant to adapting and tailoring science-based behavioral HIV prevention interventions, curriculum development, training and TA, marketing, and evaluation for high-risk racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings including LGBTQ youth?

3. Organizational Capacity (20 Points)

Does the applicant demonstrate current organizational capacity to adapt, tailor, implement, and evaluate HIV interventions for high-risk racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings including LGBTQ youth?

4. Evaluation-Monitoring Plan (20 Points)

Is the evaluation-monitoring plan feasible and does it address the required performance indicators, process and outcome data collection, analysis, and reporting activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and

Grants Office (PGO) staff, and for responsiveness by National Center for HIV, STD and TB Prevention (NCHSTP)/Division of HIV and AIDS Prevention (DHAP)/Capacity Building Branch (CBB). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

A Special Emphasis Review Panel consisting of external experts will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision:

1. CDC's commitment to ensure overall funding for CBA services that serve each of the four major racial/ethnic minority populations.
2. CDC's commitment to ensure overall funding for CBA services, which is distributed in proportion to the HIV/AIDS disease burden among high-risk racial/ethnic minority sub-populations.
3. CDC's commitment to ensure that CBA funding will include different high-risk racial/ethnic minority subpopulations of migrant workers, transgender individuals, or youth in non-school settings including LGBTQ youth.
4. Preference will be given to organizations that provide evidence of having previously adapted and tailored interventions listed under the "Purpose" section for migrant workers, transgender individuals, or youth in non-school settings, including LGBTQ youth.
5. CDC may allocate additional funding to this program announcement to provide CBA as described in this announcement to reach organizations specifically targeting underserved Latino/a youth at risk for HIV and STDs (*i.e.*, high-risk runaway Latino/a youth engaging in survival activities such as sex in exchange for drugs, money, shelter, or food).

CDC will provide justification for any decision to fund out of rank order.

CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

Anticipated Award Date: August 1, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding,

authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Parts 74 and 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-4 HIV/AIDS Confidentiality Provisions
- AR-5 HIV Program Review Panel Requirements
- AR-7 Executive Order 12372 Review
- AR-8 Public Health System Reporting Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-14 Accounting System Requirements
- AR-15 Proof of Non-Profit Status
- AR-20 Conference Support
- AR-21 Small, Minority, and Women-Owned Business
- AR-23 States and Faith-Based Organizations
- AR-25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC website at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

An additional Certifications form from the PHS 5161-1 application needs to be included in your Grants.gov electronic submission only. Refer to <http://www.cdc.gov/od/pgo/funding/PHS5161-1Certificates.pdf>. Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide CDC with an original plus two hard copies of the following reports:

1. First trimester progress report, due 30 days after the first four (4) months of the project period. The report must contain the following elements:
 - a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.
 c. New Budget Period Program Proposed Activity Objectives.
 d. Budget.
 e. Measures of effectiveness.
 f. Additional requested information, including (1) data related to performance target goals; (2) data on progress toward achieving objectives; (3) an inventory of total individual capacity building assistance and proactive training for the reporting period; and (4) data related to the quality assurance system.

2. Second trimester interim progress report shall be due 30 days after the completion of the first eight (8) months of the project period. This second trimester progress report will serve as your non-competing continuation application for the next funding cycle. (See Continuing Application Requirements provided by Procurement and Grants Office.) This report must include elements a–f, as listed in the first trimester report, and be completed during this time period (months 5–8). The report should also include the following:

a. Base line and actual level of core performance indicators.
 b. Specific guidance, which will be provided by the CDC three months prior to the due date.

3. The third trimester progress report shall be due 30 days after the end of the budget period. This report must include elements a–f as listed in the first trimester report, elements a–b as listed in the second trimester report, and completed during this time period (months 9–12).

4. Financial status report is due no more than 90 days after the end of the budget period.

5. Final financial and performance reports are due no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For Pre-application Technical Consultation: Send questions regarding this application to DHAPCBAPT@CDC.GOV. You will receive a response within 24–48 hours.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2700.

For program technical assistance, contact: Gerlinda Gallegos Somerville,

Public Health Analyst, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Capacity Building Branch, 1600 Clifton Road, Mailstop E-40, Atlanta, GA 30333, Telephone: 404-639-2918. E-mail address: DHAPCBAPT@CDC.GOV.

For financial, grants management, or budget assistance, contact: Roslyn Curington, Grants Management Specialist, Centers for Disease Control and Prevention, Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341-4146. Telephone: 770-488-2767, E-mail address: zlp8@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: April 6, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*

[FR Doc. 05-7286 Filed 4-11-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-5033-N6]

Medicare Program; Cancellation of the April 13, 2005 Advisory Board Meeting on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Cancellation of meeting.

SUMMARY: This notice cancels the April 13, 2005 Advisory Board Meeting on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease (ESRD) Services. We published the meeting notice in the **Federal Register** on March 25, 2005 (70 FR 15343).

DATES: *Effective Date:* The notice announcing the cancellation of the meeting is effective April 12, 2005.

FOR FURTHER INFORMATION CONTACT: Pamela Kelly by e-mail at ESRDAdvisoryBoard@cms.hhs.gov or telephone at (410) 786-2461.

SUPPLEMENTARY INFORMATION: On June 2, 2004, we published a **Federal Register**

notice requesting nominations for individuals to serve on the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease (ESRD) Services. The June 2, 2004 notice also announced the establishment of the Advisory Board and the signing by the Secretary on May 11, 2004 of the charter establishing the Advisory Board. On January 28, 2005, we published a **Federal Register** notice (70 FR 4132) announcing the appointment of eleven individuals to serve as members of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services, including one individual to serve as co-chairperson, and one additional co-chairperson, who is employed by CMS. The first public meeting of the Advisory Board was held on February 16, 2005. The second public meeting of the Advisory Board scheduled for April 13, 2005 has been cancelled.

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 7, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05-7408 Filed 4-8-05; 1:51 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the World Health Organization International Programme on Chemical Safety

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing its intent to accept and consider a single source application for the award of a cooperative agreement to the World Health Organization (WHO) to support the International Programme on Chemical Safety (IPCS). FDA anticipates providing \$90,000 (direct and indirect costs) in fiscal year 2005 in support of this project. Subject to the availability of Federal funds and successful performance, 2 additional years of support up to \$90,000 per year (direct and indirect costs) will be available. FDA will support the research

covered by this notice under the authority of section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

The cooperative agreement ensures FDA's participation and leadership in important international risk assessment and standard setting activities for food ingredients, contaminants, and veterinary drug residues. The development of such international standards provides the public with greater assurance of the quality and safety of food sold in the United States.

II. Eligibility Information

Competition is limited to the WHO/IPCIS because it is the parent organization of the Joint Food and Agriculture Organization (FAO)/WHO Expert Committee on Food Additives (JECFA), which provides scientific advice to the Codex Alimentarius Commission (CAC). The international food standards established by the CAC are recognized by the World Trade Organization (WTO) as necessary to protect public health and presumed to be consistent with the Sanitary and Phytosanitary (SPS) Agreement of the General Agreement on Tariffs and Trade (GATT). These programs under the IPCIS are the only such programs in existence, and make the IPCIS unique as a participant in international standard setting for food ingredients, contaminants, and veterinary drug residues. Awarding this cooperative agreement will help ensure that the risk assessments provided by the JECFA to the CAC are science-based, enhance the safety of food sold in the United States, and enhance the safety of food additives and veterinary drug residues in imported food.

As of October 1, 2003, applicants are required to have a Dun and Bradstreet Number (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, foreign applicants should go to <http://www.grants.gov/RequestaDUNS>, 4th paragraph. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

III. Application and Submission

For further information or a copy of the complete Request for Applications (RFA) contact Cynthia Polit, Grants Management Specialist, Division of Contracts and Grants Management (HFA-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7180, e-mail: cynthia.polit@fda.gov or cpolit@oc.fda.gov. This RFA can also be viewed on [Grants.gov](http://www.grants.gov) under "Grant Find." A copy of the complete RFA can also be viewed on FDA's Center for Food Safety and Applied Nutrition Web site at <http://www.cfsan.fda.gov/list.html>.

Dated: April 5, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-7288 Filed 4-11-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D-0182]

Guidance for Industry and Food and Drug Administration Staff; Submission and Resolution of Formal Disputes Regarding the Timeliness of Premarket Review of a Combination Product; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry and FDA staff entitled "Submission and Resolution of Formal Disputes Regarding the Timeliness of Premarket Review of a Combination Product." The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) delegates to the Office of Combination Products (OCP) responsibility for resolving disputes about the timeliness of premarket review of combination products. This guidance document provides information about presenting requests for resolution of disputes about the timeliness of premarket review of combination products.

DATES: Submit written or electronic comments on agency guidances at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this guidance document to the Office of Combination Products

(HFG-3), 15800 Crabbs Branch Way, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments concerning the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Office of Combination Products (HFG-3), Food and Drug Administration, 15800 Crabbs Branch Way, Rockville, MD 20855, 301-427-1934, FAX: 301-427-1935.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and FDA staff entitled "Submission and Resolution of Formal Disputes Regarding the Timeliness of Premarket Review of a Combination Product." In the **Federal Register** of May 4, 2004 (69 FR 24653), FDA issued a notice of availability of a draft guidance document covering the same topic. The draft guidance document was entitled "Combination Products, Timeliness of Premarket Reviews, Dispute Resolution Guidance."

MDUFMA delegated to OCP responsibility for resolving disputes about the timeliness of reviews of premarket applications covering combination products. This guidance document provides information on how an applicant submitting an application covering a combination product can submit a request that OCP resolve such a dispute.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on how to present to OCP disputes pertaining to the timeliness of reviews of combination products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments on the guidance at any time. Submit two paper copies of any mailed comments, except that individuals may

submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Additional copies of this guidance are available at <http://www.fda.gov/oc/combo> or <http://www.fda.gov/ohrms/dockets/default.htm>. You may also request additional copies of the guidance by e-mailing combination@fda.gov.

Dated: April 5, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-7265 Filed 4-11-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Addition of Trivalent Influenza Vaccines to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Through this notice, the Secretary announces that trivalent influenza vaccines are covered vaccines under the National Vaccine Injury Compensation Program (VICP), which provides a system of no-fault compensation for certain individuals who have been injured by covered childhood vaccines. This notice serves to include trivalent influenza vaccines as covered vaccines under Category XIV (new vaccines) of the Vaccine Injury Table (Table), which lists the vaccines covered under the VICP. This notice ensures that petitioners may file petitions relating to trivalent influenza vaccines with the VICP even before such vaccines are added as a separate and distinct category to the Table through rulemaking.

DATES: This Notice is effective on April 12, 2005. As described below, trivalent influenza vaccines will be covered under the VICP on July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Medical Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C-26, 5600 Fishers Lane,

Rockville, Maryland 20857; telephone number (301) 443-4198.

SUPPLEMENTARY INFORMATION: The statute authorizing the VICP provides for the inclusion of additional vaccines in the VICP when they are recommended by the Centers for Disease Control and Prevention (CDC) to the Secretary for routine administration to children. See section 2114(e)(2) of the Public Health Service (PHS) Act, 42 U.S.C. 300aa-14(e)(2). Consistent with section 13632(a)(3) of Public Law 103-66, the regulations governing the VICP provide that such vaccines will be included as covered vaccines in the Table as of the effective date of an excise tax to provide funds for the payment of compensation with respect to such vaccines (42 CFR 100.3(c)(5)).

The two prerequisites for adding trivalent influenza vaccines to the VICP as covered vaccines as well as to the Table have been satisfied. In its May 28, 2004, issue of the Morbidity and Mortality Weekly Report, the CDC published its recommendation that influenza vaccines be routinely administered to children between 6 and 23 months of age because children in this age group are at an increased risk for complications from influenza. In addition, on October 22, 2004, the excise tax for trivalent influenza vaccines was enacted by Public Law 108-357, the "American Jobs Creation Act of 2004 (the Act)." Section 890 of this Act adds all trivalent vaccines against influenza to section 4132(a)(1) of the Internal Revenue Code of 1986, which defines all taxable vaccines.

By way of background, two types of influenza vaccines are routinely given to millions of individuals in the United States each year. One is an inactivated (killed) virus vaccine administered using a syringe, while the other is a live, attenuated product administered in a nasal spray. Both vaccine types are trivalent, meaning that they each contain three vaccine virus strains which are thought most likely to cause disease outbreaks during the influenza season. While trivalent vaccines are commonly used for yearly influenza vaccine campaigns, a monovalent product may sometimes be used if it appears that one strain has the potential to cause widespread disease. Such was the case in 1976-1977 when Swine flu influenza virus was thought to have potential to cause a worldwide pandemic. Bivalent influenza vaccines have also been used in the past, although infrequently. This notice only covers trivalent influenza vaccines.

Under the regulations governing the VICP, Category XIV of the Table

specifies that "[a]ny new vaccine recommended by the [CDC] for routine administration to children, after publication by the Secretary of a notice of coverage" is a covered vaccine under the Table (42 CFR 100.3(a), Item XIV). As explained above, the CDC's recommendation has been accepted. This Notice serves to satisfy the regulation's publication requirement. Through this notice, trivalent influenza vaccines are included as covered vaccines under Category XIV of the Table. Because the excise tax enacted with respect to influenza vaccines extends only to trivalent vaccines, any non-trivalent influenza vaccines (should they be administered to the public in the future) will not be covered under the VICP or the Table. To the Secretary's knowledge, the only influenza vaccines that have been administered in the United States in the past 8 years are trivalent influenza vaccines.

Under section 2114(e) of the PHS Act, as amended by section 13632(a) of the Omnibus Budget Reconciliation Act of 1993, coverage for a vaccine recommended by the CDC for routine administration to children shall take effect upon the effective date of the tax enacted to provide funds for compensation with respect to the vaccine included as a covered vaccine in the Table. Under section 890 of the American Jobs Creation Act of 2004, the effective date for the excise tax enacted for trivalent vaccines against influenza applies on and after the later of: "(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of [the Act]; or (B) the date on which the Secretary of Health and Human Services lists any vaccines against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund." It further provides that if the vaccines were sold before or on the effective date of the excise tax, but delivered after this date, the delivery date of such vaccines shall be considered the sale date.

Under this authorizing statutory language, the Secretary may choose to use December 1, 2004, or a later date as effective date of coverage, imposing the excise tax for trivalent influenza vaccines on this effective date. On November 10, the Advisory Commission on Childhood Vaccines voted to recommend July 1, 2005, as the effective date for the imposition of excise tax on trivalent influenza vaccines. Imposition of a new excise tax in the middle of this 2004-2005 influenza season may cause confusion and possibly impede the prompt sale and/or distribution or redistribution of influenza vaccines. To

avoid any confusion and possible effects on the prompt sale and/or distribution of such vaccine, the Secretary has determined that the effective date for the enactment of the excise tax for trivalent influenza vaccines should be July 1, 2005. Thus, trivalent influenza vaccines are included as covered vaccines under Category XIV of the Table as of July 1, 2005. Petitioners may file petitions related to trivalent influenza vaccines as of July 1, 2005.

Petitions filed concerning vaccine-related injuries or deaths associated with trivalent influenza vaccines must be filed within the applicable statute of limitations. The filing limitations applicable to petitions filed with the VICP are set out in section 2116(a) of the PHS Act (42 U.S.C. 300aa-16(a)). In addition, section 2116(b) of the PHS Act lays out specific exceptions to these statutes of limitations that apply when the effect of a revision to the Table makes a previously ineligible person eligible to receive compensation or when an eligible person's likelihood of obtaining compensation significantly increases. Under this provision, persons who may be eligible to file petitions based on the addition of a new vaccine under Category XIV of the Table may file a petition for compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table (42 U.S.C. 300aa-16(b)). Thus, persons whose petitions may not be timely under the limitations periods described in section 2116(a) of the PHS Act, may still file petitions concerning vaccine-related injuries or deaths associated with trivalent influenza vaccines until July 1, 2007, as long as the vaccine-related injury or death occurred on or after July 1, 1997 (8 years prior to the effective date of the addition that included trivalent influenza vaccines as covered vaccines).

The Secretary plans to amend the Table through the rulemaking process by including trivalent influenza vaccines as a separate category of vaccines in the Table. July 1, 2005, will remain the applicable effective date when the Secretary makes a corresponding amendment to add trivalent influenza vaccines as a separate category on the Table through rulemaking.

Dated: April 5, 2005.

Elizabeth M. Duke,
Administrator.

[FR Doc. 05-7264 Filed 4-11-05; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4978-N-03]

Notice of Proposed Information Collection for Public Comment; Indian Housing Operating Cost Study

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 13, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4114, Washington, DC 20410-5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708-0713, extension 4114, for copies of proposed forms and/or other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Housing Operating Cost Study, 1937 Act Housing Operating Costs Survey.

OMB Control Number: 2577-XXXX [to be assigned].

Description of the need for the information and proposed use: The Indian Housing Block Grant (IHBG) formula uses Allowable Expense Level (AEL) data in determining the operating subsidy portion of the IHBG grant for Tribes that continue to operate housing units developed under 1937 Act programs. During recent Formula Negotiated Rulemaking Committee sessions several Committee members indicated that AEL did not adequately recognize the real cost of operating housing in Indian Country and that the AEL values needed to be replaced with a more current, accurate measure of the costs to operate housing in tribal areas. HUD committed to working with the Tribes to address this concern. There is no database with information about current operating costs of 1937 Act housing programs in Indian Country. The information gathered in this form will be used to establish a current, accurate cost database, and will support continued discussions on the role of AEL in the IHBG formula.

Agency form number, if applicable: Not applicable.

Members of affected public: Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 269 tribally designated housing entities (TDHEs) manage the 1937 Act housing for Tribes. Estimated response time is 2 hours. Estimated total responses based on 75% return rate is 202. Estimated total reporting burden is 404 hours.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 1, 2005.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E5-1656 Filed 4-11-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[WY-100-05-1310-DB]****Notice of Intent To Prepare Supplemental Information for the Jonah Infill Drilling Project Environmental Impact Statement, Pinedale, WY****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of intent.

SUMMARY: Under Section 102 (2) (C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM) Pinedale Field Office announces its intent to prepare supplemental information regarding the potential impacts to air quality of a proposed natural gas development project. On February 11, 2005, the BLM published in the **Federal Register** a Notice of Availability of a Draft Environmental Impact Statement (DEIS) for the Jonah Infill Drilling Project (JIDP) for public review and comment. The BLM will continue to accept comments from the public on only the air quality information presented in the DEIS.

DATES: Effective April 12, 2005, this notice provides the public additional time to continue to submit comments on only the air quality information presented in the JIDP DEIS. When the supplemental information is available for public review and comment, the BLM will publish a Notice of Availability in the **Federal Register** and provide the public with the opportunity to review and comment. In addition, announcements will be made through local media and posted on the BLM-Wyoming's Web site: <http://www.wy.blm.gov>.

ADDRESSES: A copy of the DEIS has been sent to affected Federal, State and local Government agencies and to other interested parties. An electronic copy of the DEIS may be viewed or downloaded from the BLM Web site at <http://www.wy.blm.gov/pfo>. Copies of the DEIS are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming.

FOR FURTHER INFORMATION CONTACT: BLM Pinedale Field Office, Carol Kruse, Project Manager, 432 East Mill Street, Pinedale, Wyoming, P.O. Box 768

Pinedale, Wyoming 82941. Ms. Kruse may also be reached at (307) 367-5352.

SUPPLEMENTARY INFORMATION: Please note that public comments and information submitted regarding this project, including names, e-mail addresses, and street addresses of the respondents, will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name, email address, or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: April 1, 2005.

Robert A. Bennett,*State Director.*

[FR Doc. 05-7418 Filed 4-8-05; 1:51 pm]

BILLING CODE 4310-22-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[AZ-910-0777-XP-241A]****State of Arizona Resource Advisory Council Meeting****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on May 3, 2005, in Kingman, Arizona, at the Dambar and Steakhouse banquet room located on 1960 E. Andy Devine Avenue. It will begin at 9:30 a.m. and conclude at 4:30 p.m. The agenda items to be covered include: Review of the January 25, 2005 Meeting Minutes; BLM State Director's Update on Statewide Issues; Presentations on Federal Land Recreation Enhancement Act, Designated Off-Highway Vehicle Areas, and Arizona Land Use Planning Updates; RAC Questions on Written Reports from BLM Field Managers; Field Office Rangeland Resource Team Proposals; Reports by the Standards and

Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11 a.m. on May 3, 2005, for any interested publics who wish to address the Council.

On May 4, the RAC will tour the Pine Lake subdivision in the Hualapai Mountains. BLM will highlight the fuel reduction projects, thinning and prescribed fire, it's jointly conducting with the Pine Lake Working Group to protect the area from catastrophic wildfires. The tour will be conducted from approximately 8 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004-2203, (602) 417-9215.

Elaine Zielinski,*Arizona State Director.*

[FR Doc. 05-7279 Filed 4-11-05; 8:45 am]

BILLING CODE 4310-32-P**INTERNATIONAL TRADE COMMISSION****[Inv. No. 337-TA-503]****Certain Automated Mechanical Transmission Systems for Medium-Duty and Heavy-Duty Trucks and Components Thereof; Termination of Investigation; Issuance of a Limited Exclusion Order and a Cease and Desist Order****AGENCY:** International Trade Commission.**ACTION:** Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation in which it has found a violation of section 337 of the Tariff Act of 1930 and has issued a limited exclusion order and a cease and desist order.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General

information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on January 7, 2004, based on a complaint filed by Eaton Corporation ("Eaton") of Cleveland, Ohio. 69 FR 937 (January 7, 2004). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof, by reason of infringement of claim 15 of U.S. Patent No. 4,899,279 ("the '279 patent"); claims 1-20 of U.S. Patent No. 5,335,566 ("the '566 patent"); claims 2-4 and 6-16 of U.S. Patent No. 5,272,939 ("the '939 patent"); claims 1-13 of U.S. Patent No. 5,624,350 ("the '350 patent"); claims 1, 3, 4, 6-9, 11, 13, 14, 16 and 17 of U.S. Patent No. 6,149,545 ("the '545 patent"); and claims 1-16 of U.S. Patent No. 6,066,071 ("the '071 patent").

The complaint and notice of investigation named three respondents ZF Meritor, LLC of Maxton, North Carolina, ZF Friedrichshafen AG of Friedrichshafen, Germany, and ArvinMeritor, Inc. ("ArvinMeritor") of Troy, Michigan.

On July 21, 2004, the Commission issued a notice that it had determined not to review the ALJ's initial determination ("ID") (Order No. 20) terminating the investigation as to the '071 patent and as to claims 2, 3, and 5-20 of the '566 patent, claims 4, 7, and 12 of the '350 patent, and claims 4, 8-9, and 14 of the '545 patent.

On August 11, 2004, the Commission issued a notice that it had determined not to review the ALJ's ID (Order No. 31) terminating the investigation as to the '939 patent and as to claims 10, 11, and 13 of the '350 patent.

On August 16, 2004, the Commission issued a notice that it had determined not to review the ALJ's ID (Order No. 28) that Eaton has satisfied the economic prong of the domestic industry requirement as to certain articles it alleges practice the patents at issue in this investigation.

On August 23, 2004, the Commission issued a notice that it had determined not to review the ALJ's ID (Order No. 30) that Eaton did not meet the technical prong of the domestic industry requirement as to the remaining claims, claims 1-3, 5, 6, 8, and 9, of the '350 patent, thus terminating the investigation as to that patent.

On September 17, 2004, the Commission issued a notice that it had determined not to review the ALJ's ID (Order No. 38) granting Eaton's partial summary determination that the importation requirement has been met.

On September 23, 2004, the Commission issued a notice that it had determined not to review the ALJ's ID (Order No. 45) granting Eaton's motion for summary determination that it satisfies the economic prong of the domestic industry requirement of section 337 as to its medium-duty automated transmissions. The Commission also issued a notice on September 23, 2004, that it had determined not to review ALJ's ID (Order No. 55) granting Eaton's motion for partial termination of the investigation as to claim 1 of the "566 patent.

On January 7, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The ALJ found a violation of section 337 by reason of infringement of claim 15 of the '279 patent by respondents. He found no violation of section 337 regarding the '566 and the '545 patents. Petitions for review were filed by Eaton, the respondents, and the Commission investigative attorney on January 21, 2005. All parties filed responses to the petitions on January 28, 2005.

On February 24, 2005, the Commission issued a notice indicating that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of section 337. The Commission also invited the parties to file written submissions regarding the issues of remedy, the public interest and bonding, and provided a schedule for filing such submissions.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof covered by claim 15 of the '279 patent. The order covers automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components

thereof that are manufactured abroad by or on behalf of, or imported by or on behalf of the respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The limited exclusion order does not cover parts necessary to service infringing automated mechanical transmission systems installed on trucks prior to the issuance of the order.

The Commission also determined to issue a cease and desist order prohibiting ArvinMeritor from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for automated mechanical transmission systems for medium-duty and heavy-duty trucks, and components thereof covered by claim 15 of the '279 patent.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (f)(1), 19 U.S.C. 1337(d)(1) and (f)(1), do not preclude issuance of either the limited exclusion order or the cease and desist order. In addition, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. Finally, the Commission determined to deny both the complainant's motion to strike and the respondents' motion for leave to file a surreply. The Commission's orders and opinion in support thereof were delivered to the President on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: April 7, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-7298 Filed 4-11-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-2103-1]

The Impact of Trade Agreements Implemented Under Trade Promotion Authority

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on March 31, 2005 of notification from the United States Trade Representative (USTR) on behalf of the President under section 2103(c)(3)(B) of the Trade Act of 2002 (19 U.S.C. 3803(c)(3)(B)), the Commission instituted investigation No. TA-2103-1, The Impact of Trade Agreements Implemented Under Trade Promotion Authority.

Background: As required in section 2103(c)(3)(B) of the Trade Act of 2002 (19 U.S.C. 3803(c)(3)(B)), the Commission must submit a report to the Congress not later than June 1, 2005, that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act and the date on which the President decides to seek an extension requested under paragraph (2) of section 2103(c).

The only agreements implemented within this time period are free trade agreements with Chile, Singapore, and Australia.

As required by the statute, the Commission will provide its report not later than June 1, 2005.

DATES: *Effective Date:* March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Project Manager, Kyle Johnson ((202) 205-3229 or kyle.johnson@usitc.gov), or Deputy Project Manager, Alan Fox ((202) 205-3267 or alan.fox@usitc.gov). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel ((202) 205-3091 or william.gearhart@usitc.gov). For media information, contact Peg O'Laughlin ((202) 205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on ((202) 205-1810).

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on April 27, 2005. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., April 20, 2005 in accordance with the requirements in the "Submissions" section below. In the event that, as of the close of business on April 20, 2005, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary ((202) 205-2000) after April

20, 2005, to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation. All written submissions, including requests to appear at the hearing, statements, and briefs should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Any prehearing briefs or statements should be filed not later than 5:15 p.m., April 20, 2005; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 2, 2005.

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf).

Any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "nonconfidential" version, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission plans to publish only a public report in this investigation. The Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000.

Issued: April 6, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-7289 Filed 4-11-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-467]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2004 Special Review

AGENCY: International Trade Commission.

ACTION: Institution of investigation and request for public comment

SUMMARY: Following receipt on April 1, 2005 of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332-467, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2004 Special Review.

Background: As requested by the USTR, under section 332(g) of the Tariff Act of 1930 and in accordance with section 503(d)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2463(d)(1)(A)), the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Indonesia for HTS subheadings 4412.13.40, and 9001.30.00; and for Thailand for HTS subheadings 7113.11.50 and 9009.12.00.

With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of \$115,000,000.

As requested by the USTR, the Commission will seek to provide its advice not later than May 31, 2005.

DATES: *Effective Date:* April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Project Leader, Cynthia B. Foreso (202-205-3348 or cynthia.foreso@usitc.gov).

The above person is in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202-205-3091 or william.gearhart@usitc.gov.

Written Submissions: The Commission does not plan to hold a public hearing in this investigation.

However, interested parties are invited to submit written statements or briefs concerning this investigation. All written submissions, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and should be filed not later than 5:15 p.m., May 6, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of these investigations in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202-205-2000.

Issued: April 7, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-7299 Filed 4-11-05; 8:45 am]

BILLING CODE 7020-02-P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities: Submission for OMB Review; Comment Request: See List of Evaluation Related ICRs in Section A

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute), part of the Morris K. Udall Foundation, is submitting to the Office of Management and Budget (OMB) six Information Collection Requests (ICRs). Five of the six ICRs are for revisions to currently approved collections due to expire 06/30/2005 (OMB control numbers 3320-0003, 3320-0004, 3320-0005, 3320-0006, and 3320-0007). One ICR pertains to a new collection request. The six ICRs are being consolidated under a single filing to provide a more coherent picture of information collection activities designed primarily to measure performance. The proposed collections are necessary to support program evaluation activities. The collection is expected neither to have a significant economic impact on respondents, nor to affect a substantial number of small entities. The average cost (in time spent) per respondent is estimated to be 0.16 hours/\$6.18. Each ICR describes the authority and need for program evaluation, the nature and use of the information to be collected, the expected burden and cost to respondents and the U.S. Institute, and how the evaluation results will be made available. The ICRs also contain the specific questionnaires that will be used to collect the information for each program area. Approval is being sought for each ICR separately, and information collection will begin for each program area once OMB has approved the respective ICR. The U.S. Institute

published a **Federal Register** notice on February 2, 2005, 70 FR, pages 5489-5494, to solicit public comments for a 60-day period. The U.S. Institute received one comment. The comment and the U.S. Institute's response are included in the ICRs. The purpose of this notice is to allow an additional 30 days for public comments regarding these ICRs.

DATES: Comments must be submitted on or before May 12, 2005.

ADDRESSES: Direct comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Keith Belton, 725 17th Street, NW., Washington, DC 20503, Desk Officer for The Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution kbelton@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Technical details of the U.S. Institute's program evaluation system are contained in a January 2005 design document entitled "Program Evaluation System at the U.S. Institute for Environmental Conflict Resolution". Paper copies of this report can be obtained by contacting the U.S. Institute; an electronic copy can be downloaded from the U.S. Institute's website: http://www.ecr.gov/multiagency/program_eval.htm.

For further information or a copy of the ICRs, contact: Patricia Orr, Evaluation Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, Fax: 520-670-5530, Phone: 520-670-5658, E-mail: orr@ecr.gov.

SUPPLEMENTARY INFORMATION:

Overview

To comply with the Government Performance and Results Act (GPRA) (Pub. L. 103-62), the U.S. Institute for Environmental Conflict Resolution, as part of the Morris K. Udall Foundation, is required to produce, each year, an Annual Performance Budget and an Annual Performance and Accountability Report, linked directly to the goals and objectives outlined in the U.S. Institute's five-year Strategic Plan. The U.S. Institute's evaluation system is key to evaluating progress towards achieving its performance commitments. The U.S. Institute is committed to evaluating all of its projects, programs and services not only to measure and report on performance but also to use this information to learn from and improve its services. The refined evaluation system has been

carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on performance measurement, learning and improvement.

As part of the program evaluation system, the U.S. Institute intends to collect specific information from participants in, and users of, several of its programs and services. Specifically, six programs and services are the subject of this Federal Notice: (1) Mediation and facilitation services; (2) situation/conflict assessment services; (3) training and workshop services; (4) facilitated meeting services; (5) the roster program services; and (6) program support and system design services. Evaluations will mainly involve administering questionnaires to process participants and professionals, as well as members and users of the National Roster. Responses by members of the public to the Institute's request for information (*i.e.*, questionnaires) will be voluntary.

In 2003, the U.S. Environmental Protection Agency, Conflict Prevention and Resolution Center (CPRC) was granted the approval of the Office of Management and Budget (OMB) to act as a named administrator of the U.S. Institute's currently approved information collections for evaluation. The CPRC and the U.S. Institute are seeking approval as part of this proposed collection to continue this evaluation partnership. Other agencies have approached the U.S. Institute seeking (a) evaluation services and (b) assistance in establishing their own internal evaluation systems. In contrast to the U.S. Institute's relationship with CPRC, these agencies are requesting the U.S. Institute to administer its evaluation questionnaires on their behalf. Therefore, the U.S. Institute is requesting OMB approval to administer the evaluation questionnaires on behalf of other agencies. One agency, the Department of Interior (Office of Collaborative Action and Dispute Resolution) has already requested such evaluation services through its interagency agreement with the U.S. Institute. The U.S. Institute is seeking approval to make minor conforming revisions to questionnaires to allow for the broader application of the instruments (*e.g.*, change return address on cover).

The burden estimates in the ICRs take into consideration the multi-agency usage of the evaluation instruments. The broad interest in the U.S. Institute's evaluation system has fostered an evaluation collaborative among several state and federal agencies. The sharing

of evaluation resources and expertise is advantageous on several fronts: (a) Design and development efforts are not duplicated across agencies; (b) common methods for evaluating collaborative processes are established; (c) knowledge, expertise and resources are shared, realizing cost-efficiencies for the collaborating agencies; and (d) learning and improvement on a broader scale will be facilitated through the sharing of comparable multi-agency findings.

Key Issues

The U.S. Institute would appreciate receiving comments that can be used to:

- i. Evaluate whether the proposed collection of information is necessary for the proper performance of the U.S. Institute, including whether the information will have practical utility;
- ii. Determine whether the nature and extent of the proposed level of anonymity for those from whom the U.S. Institute will be collecting information is adequate and appropriate;
- iii. Evaluate the accuracy of the U.S. Institute's estimate of the burden associated with the proposed information collection activities;
- iv. Enhance the quality, utility, and clarity of the information to be collected;
- v. Minimize the burden of the information collection on those who are to respond, including suggestions concerning use of automated collection techniques or other forms of information technology (*e.g.*, allowing electronic submission of responses).

Burden

The average estimated burden for each response is 0.16 hours/\$6.18. As used in this document, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. This includes time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Hour burdens are monetized using fully burdened labor rates derived from Bureau of Labor Statistics tables (U.S. Department of

Labor, Bureau of Labor Statistics, "Employer Costs for Employee Compensation", Table 2: Civilian workers, by occupational and industry group. Available at: http://www.ecr.gov/multiagency/program_eval.htm.

Technical Details

Five of the six submitted ICRs are for revisions to currently approved collections. In 1999, the U.S. Institute, in cooperation with the Policy Consensus Initiative and state alternative dispute resolution programs, began the task of designing a common program evaluation system. After extensively piloting the evaluation instruments under the currently approved information collection, staff from the U.S. Institute, PCI, Oregon Dispute Resolution Commission, Oregon Department of Justice, Florida Conflict Resolution Consortium, Environmental Protection Agency (Conflict Prevention and Resolution Center), and the Department of Interior (Center for Alternative Dispute Resolution) joined forces to refine the evaluation instruments (particularly the mediation and facilitation instruments). This effort also benefited from input from over 40 practitioners, program administrators, evaluators, researchers and trainers. Dr. Kathy McKnight and Dr. Lee Sechrest, the University of Arizona, assisted with this effort. Evaluation consultant, Dr. Andy Rowe, GHK International, guided the earlier evaluation design. Throughout this effort the William and Flora Hewlett Foundation provided financial assistance.

Technical details of the U.S. Institute's program evaluation system are contained in a January 2005 design document entitled "Program Evaluation System at the U.S. Institute for Environmental Conflict Resolution." Paper copies of this report can be obtained by contacting the U.S. Institute; an electronic copy can be downloaded from the Institute's Web site: http://www.ecr.gov/multiagency/program_eval.htm.

Information generated from the evaluation system will be used for a variety of purposes, including performance measurement and reporting, and ongoing improvements to the design and operation of projects and services. Primary audiences for results from the evaluation system include the Udall Foundation Board of Trustees, Congress and OMB, and program management and staff, who will use the information in decision-making regarding program operations and directions. Secondary audiences will likely include practitioners in the field,

process participants, prospective users, and members of the public.

A. List of ICRs Submitted

The U.S. Institute submitted six ICRs to OMB, corresponding to 11 individual questionnaires that will be administered to those involved in collaborative problem solving and conflict resolution activities. Five of the six ICRs are for revisions to currently approved collections. In the listing below, the questionnaires are organized into six activity areas, indicating the recipients of the questionnaires and, in parentheses, the frequency of administration per respondent.

Mediation/Facilitation Services (OMB control number 3320-0004, expiring 06/30/2005).

(1) Mediations/Facilitations—Participants, at the conclusion of the process (once).

(2) Mediations/Facilitations—Participants, subsequent to the conclusion of the process (once).

(3) Mediations/Facilitations—Facilitators/Mediators (Neutral Practitioners) at the conclusion of the process (once);

Situation/Conflict Assessment Services (OMB control number 3320-0003, expiring 06/30/2005).

(4) Assessment—Initiating Organizations and Key Participants, at the conclusion of the assessment (once).

(5) Assessment—Assessor (Neutral Practitioner) at the conclusion of the assessment (once);

Training and Workshop Services (OMB control number 3320-0006, expiring 06/30/2005).

(6) Training/Workshop—Participants, at the conclusion (once).

Facilitated Meeting Services (OMB control number 3320-0007, expiring 06/30/2005).

(7) Facilitated Meeting—Meeting Attendees, at the conclusion of the process (once);

Roster Program Services (OMB control number 3320-0005, expiring 06/30/2005).

(8) Roster—Members (once annually).

(9) Roster—Users, at the end of the search (once).

(10) Roster—Users, subsequent to the search (once);

Program Support and System Design Services (New collection request).

(11) Program Support and System Design—Agency Representatives and Key Participants, annually or at the conclusion of the project if the project is completed in less than 12 months (once annually for length of project).

B. Contact Individual for ICRs

Patricia Orr, Evaluation Coordinator, U.S. Institute for Environmental Conflict

Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, Fax: 520-670-5530, Phone: 520-670-5658, E-mail: orr@ecr.gov.

C. Confidentiality and Access to Information

The U.S. Institute is committed to providing agencies, researchers and the public with information on the effectiveness of collaborative problem solving and conflict resolution processes and the performance of the U.S. Institute's programs and services. Access to such useful information will be facilitated to the extent possible. The U.S. Institute will strive to report all information in an open and transparent manner. The U.S. Institute is also committed, however, to managing the collection and reporting of data so as not to interfere with any ongoing processes or the subsequent implementation of agreements. Project/case specific data will not be released until an appropriate time period has passed following conclusion of the project/case; such time periods will be determined on a case-by-case basis. Freedom of Information Act (FOIA) requests will also be evaluated on a case-by-case basis.

To encourage candor and responsiveness on the part of those completing the questionnaires, the U.S. Institute intends to report information obtained from questionnaires only in the aggregate at a case/project or program level. The U.S. Institute also intends to withhold the names of respondents and individuals named in responses. The U.S. Institute believes such information regarding individuals is exempt from disclosure under the Freedom of Information Act (FOIA), pursuant to exemption (b)(6) (5 U.S.C. Section 552(b)(6)), as the public interest in disclosure of that information would not outweigh the privacy interests of the individuals. Therefore, respondents will be afforded anonymity to the extent that names of respondents will not be revealed. Furthermore, no substantive case-specific information that might be confidential under statute, court order or rules, or agreement of the parties will be sought.

D. Information on Individual ICRs

Mediation/Facilitation Services

A variety of non-adversarial, participatory processes are available as adjuncts or alternatives to conventional forums for solving environmental problems or resolving environmental conflicts. Such collaborative processes range broadly depending on the nature of the problem/dispute and the parties

involved as well as their context (for example, early on in planning processes, when seeking administrative relief, or during litigation). Under the right circumstances, a well-designed collaborative process facilitated or mediated by the appropriate mediator/facilitator (neutral practitioner) can effectively assist parties in reaching agreement on plans, proposals, and recommendations to solve their problem or resolve their dispute. Collaborative processes can also result in improvement in relationships among the parties, and increase capacity among the parties to manage or resolve the issue or dispute. The following survey instruments have been designed for use across the broad range of collaborative processes, be it a process to reach agreement on a plan or a set of recommendations or environmental mediation to resolve a dispute.

(1) Mediation/Facilitation Process—Participants End-of-Process Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a mediation/facilitation process, the participants that have been involved will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: Are the parties now more likely to consider collaborative processes in the future; were the appropriate participants effectively engaged; did the participants have the capacity to engage in the process; was the mediator/facilitator that guided the process appropriate; and did all participants have access to relevant information? The voluntary questionnaire contains 27 questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire will provide the opportunity to evaluate if the intended outcomes were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are parties to the collaborative processes. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 600 hours and \$23,400 respectively. These values were calculated assuming that on average: (a) Participants require 20 minutes per questionnaire; (b) there are 12 respondents per case; (c) respondents are requested to complete this survey only once; and (d) there will be 150 cases evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

(2) Mediation/Facilitation Process—Participants Follow-up Questionnaire; Revision of a currently approved collection; Abstract: To gain information concerning the longer-term effectiveness of the mediation/facilitation process, a follow-up questionnaire will be administered to the parties at a future date following conclusion of the process. Topics to be examined include: Do all participants perceive an improvement in their collective relationships; is the agreement durable. The voluntary questionnaire contains 12 questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire will permit U.S. Institute staff to evaluate if the process outcomes were sustainable, and if not, why not. The information will also facilitate the assessment of the longer-term impacts of the collaborative processes and agreements. Affected Entities: Entities potentially affected by this action are participants to mediations/facilitations. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 300 hours and \$11,700, respectively. These values were calculated assuming that on average: (a) Participants require 10 minutes per questionnaire; (b) there are approximately 12 respondents per project; (c) respondents are asked to complete this questionnaire only once; and (d) there will be 150 cases evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

(3) Mediation/Facilitation Process—Mediator/Facilitator (Neutral Practitioner) Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a mediation/facilitation process, the mediator(s)/facilitator(s) will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: Was the collaborative approach well suited to the nature of the issues in conflict; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? In most cases, it will be specified in the mediator/facilitator contracts that they are required to complete the questionnaire. The mediator/facilitator questionnaire contains 34 questions. Information from this questionnaire will provide the opportunity to evaluate if the intended mediation/facilitation outcomes/impacts were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this

action are mediators/facilitators who are federal agency staff or contracted non-federal professionals. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 100 hours and \$3,900, respectively. These values were calculated assuming that on average: (a) Mediators/facilitators will require 30 minutes per questionnaire; (b) there are 2 respondents per project; (c) respondents are surveyed only once; and (d) there will be 100 cases evaluated each year (**Note:** The EPA's CPRC does not require ICR clearance to evaluate its cases using this instrument. The CPRC mediators/facilitators will be paid under contract to complete the evaluation questionnaires). Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

Situation/Conflict Assessment Services

Situation or conflict assessments are conducted by a neutral party and include a series of confidential interviews in person or on the telephone with individuals or groups of parties. Through such assessments, assessors (neutral practitioners) identify and clarify key issues and parties, and assess the appropriateness of a mediation/facilitation process and its potential for helping the parties reach agreement. Assessment reports seek to clarify and communicate in a neutral manner the issues and concerns of all parties, and commonly conclude with process design recommendations intended to provide the parties with one or more options for effectively collaborating to find a solution to their conflict.

(4) Assessment—Initiating Organization/Key Participant Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a situation/conflict assessment process, the initiating agencies/organization(s) and key participants will be surveyed once via questionnaire to determine their views on a variety of issues. Topics to be investigated include: Was the conflict assessment approach well suited to the nature of the issues in conflict; was the selected assessor (neutral practitioner) appropriate for the assignment; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? The voluntary questionnaire contains 11 questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire provides the opportunity to: (a) Evaluate the performance for specific cases/projects; (b) evaluate the performance of

assessment programs; and (c) use the evaluation feedback as a learning tool to improve the design of future assessment cases/projects. Affected Entities: Entities potentially affected by this action are individuals in initiating and other key organizations that participate in a conflict assessment. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 62.5 hours and \$2,437 respectively. These values were calculated assuming that on average: (a) Respondents require 10 minutes per questionnaire; (b) there are 5 respondents per project (c) respondents are surveyed only once; and (d) there will be 75 assessments evaluated each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

(5) Assessment—Assessor (Neutral Practitioner) Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a situation/conflict assessment, the selected assessor(s) will be surveyed once via questionnaire to determine their views on a variety of issues. Topics to be investigated include: Was the conflict assessment approach well suited to the nature of the issues in conflict; was assisted negotiation recommended; and, was the recommendation followed? In most cases, it will be specified in the assessor's contract that the assessor will be required to complete the questionnaire. The assessor's questionnaire contains nine questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire will permit the agency staff to evaluate the assessment process and outcomes, and learn from and improve the design of future assessment projects. Affected Entities: Entities potentially affected by this action are assessors who either are staff from or have been contracted by the agency. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 5 hours and \$195, respectively. These values were calculated assuming that on average: (a) Assessors require 6 minutes per questionnaire; (b) there is one respondent per project; (c) respondents are surveyed only once; and (d) there will be 50 assessments evaluated each year (**Note:** The EPA's CPRC does not require ICR clearance to evaluate its cases using this instrument. The CPRC assessors are paid under contract to complete the evaluation questionnaires). Cost burden estimates assume: (a) There

are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

Training and Workshop Services

Training and workshop sessions are conducted by agency staff and contractors for a variety of audiences. The subject of training and workshop sessions varies widely, depending on the participants and their specific training needs. In general, the training and workshop sessions are designed to increase the appropriate and effective use of collaborative problem solving and conflict resolution processes.

(6) Training/Workshop—Participants Questionnaire, at the conclusion of the training/workshop; Revision of a currently approved collection; Abstract: Training participants will be asked to complete a voluntary questionnaire at the end of the training or workshop session. Participation is voluntary and the survey instrument contains seven questions, requiring responses to fill-in-the-blank and open-ended questions. Topics to be evaluated include whether: The training objectives were clear and understood by the participants; an appropriate trainer(s)/facilitator(s) guided the session; participants were engaged appropriately; participants gained unable knowledge. Affected Entities: Entities potentially affected by this action are individuals who participate in training/workshop sessions. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 195 hours and \$7,605, respectively. These values were calculated assuming that on average: (a) Training participants require 6 minutes to complete this questionnaire; and (b) there will be 1,950 participants evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

Facilitated Meeting Services

Agency staff and contractors facilitate and provide leadership for many meetings, ranging from small group meetings to large public convenings of several hundred attendees. The purpose of the facilitated meetings varies widely, depending on the attendees and their specific meeting objectives.

(7) Meeting Facilitation—Participants Questionnaire, at the conclusion of the meeting; Revision of a currently approved collection; Abstract: Participants at facilitated meetings run by agency staff or contractors will be asked to complete a voluntary questionnaire at the conclusion of the

meeting. The questionnaire used in this case contains seven questions, requiring fill-in-the blank and open-ended responses. Information from this questionnaire will help evaluate the effectiveness of meeting design, effectiveness of facilitator(s), and meeting accomplishments. Affected Entities: Entities potentially affected by this action are individuals who participate in these meetings. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 351 hours and \$13,689, respectively. These values were calculated assuming that on average: (a) Meeting attendees require 6 minutes to complete the questionnaire, and (b) there will be 3,510 participants evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

Roster Program Services

The U.S. Institute has a full-time Roster Manager who supervises a Roster Program consisting of two main components: Design and operation of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals and an associated referral system. Membership on the roster remains open to new applicants at all times. Potential members apply on-line and are required to provide information that demonstrates a level of training and experience adequate to meet specific, objective entry criteria. First constituted in February 2000, the roster currently includes over 250 members nationwide. When making referrals and locating neutral practitioners for sub-contracting, the U.S. Institute uses the roster as a primary source to identify experienced individuals, particularly in the locale of the project or dispute (as required by the U.S. Institute's enabling legislation). The public now has direct access to the roster search system via the Internet. When requested by any party, the Roster Manager also provides advice and assistance regarding selection of appropriate practitioners.

(8) Roster—Members Questionnaire; Revision of a currently approved collection; Abstract: On an annual basis roster members will be surveyed to evaluate their perceptions of the roster and to solicit their feedback on how the roster program can be improved. This voluntary questionnaire contains two questions, requiring fill-in-the blank and open-ended responses. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the Roster is performing in meeting the

needs of roster members. Affected Entities: Entities potentially affected by this action are roster members. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 25 hours and \$975, respectively. These values were calculated assuming that on average: (a) Roster members require 5 minutes per questionnaire; (b) 300 roster members will respond per year; (c) respondents are surveyed only once annually. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

(9) Roster—Questionnaire for Users After Each Roster Search; Revision of a currently approved collection; Abstract: Users who search the roster will be surveyed once for each new roster search. This voluntary questionnaire contains four questions, requiring simple fill-in-the blank and open-ended responses. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the Roster is performing in meeting the needs of those searching the roster. Affected Entities: Entities potentially affected by this action are individuals who use the roster search system. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 50 hours and \$1,950, respectively. These values were calculated assuming that on average: (a) Roster searchers require six minutes to complete the questionnaire; (b) there will be 500 searches per year; and (c) searchers are asked to complete this questionnaire once per search. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

(10) Roster—User Questionnaire—Follow-Up to Search; Revision of a currently approved collection; Abstract: Users of the roster system will receive a follow-up questionnaire approximately four weeks after their search. This voluntary questionnaire contains five questions, requiring fill-in-the blank and open-ended responses. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the roster program is performing to help users find appropriate practitioners. Affected Entities: Entities potentially affected by this action are individuals who use the roster search system. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 17 hours and \$663, respectively. These values were calculated assuming that on average: (a) Users will require four minutes to

complete the questionnaire; (b) there will be 250 follow-up evaluations administered each year; and (c) searchers are asked to complete this questionnaire once per search. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr.

Program Support and System Design Services

The U.S. Institute provides leadership and assistance to agencies/organizations developing collaborative problem solving and dispute resolution programs and systems. Program development and dispute system design services include assistance with planning, developing, designing, implementing, evaluating, and/or refining federal environmental conflict resolution programs, systems for handling administrative disputes, or approaches for managing environmental decision making (e.g., with processes under the National Environmental Policy Act (NEPA)).

(11) Program Support and System Design Services—Questionnaire for Agency Representatives and Key Participants (annual survey for length of project);

New collection request; Abstract: Agency representatives and key project participants who request and receive U.S. Institute program support and system design services will be asked to complete a voluntary questionnaire containing seven questions. The questionnaire will require fill-in-the-blank and open-ended responses. Affected Entities: Entities potentially affected by this action are individuals who benefit from program support and system design services from the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately six hours and \$234, respectively. These values were calculated assuming that on average: (a) Agency representatives or key project participants require six minutes to complete the questionnaire; (b) there will be 60 responses each year; and (c) on average three agency representatives/key participants are involved in each initiative. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at \$39/hr. (Authority: 20 U.S.C. 5601–5609)

Dated: April 6, 2005.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 05–7278 Filed 4–11–05; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–070]

National Environmental Policy Act; Mars Exploration Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final programmatic environmental impact statement (FPEIS) for implementation of the Mars Exploration Program (MEP).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued an FPEIS for the MEP. The FPEIS addresses the potential environmental impacts associated with continuing the preparations for and implementing the program. The MEP would be a science-driven, technology-enabled effort to characterize and understand Mars using an exploration strategy which focuses on evidence of the presence of water. The Proposed Action, that is NASA's Preferred Alternative, addresses the preparation for and implementation of a coordinated series of robotic orbital, surface, and atmospheric missions to gather scientific data on Mars and its environments through 2020. Continued planning for missions to return Martian samples to Earth would be included. Some MEP missions could use radioisotope power systems (RPSs) for electricity, radioisotope heater units (RHUs) for thermal control, and small quantities of radioisotopes in science instruments for experiments and instrument calibration. Environmental impacts associated with specific missions would be addressed in subsequent environmental documentation, as appropriate. Missions launched from the United States would likely originate from either Cape Canaveral Air Force Station (CCAFS), Florida, or Vandenberg Air Force Base (VAFB), California. **DATES:** NASA will take no final action on the proposed MEP on or before May 12, 2005, or 30 days from the date of publication in the **Federal Register** of the EPA notice of availability of the MEP FPEIS, whichever is later.

ADDRESSES: The FPEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546–0001;

(b) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109.

Hard copies of the FPEIS may be reviewed at other NASA Centers (see **SUPPLEMENTARY INFORMATION** below).

Limited hard copies of the FEIS are available for distribution by contacting Mark R. Dahl at the address, telephone number, or electronic mail address indicated below. The FPEIS is also available in Acrobat® format at <http://spacescience.nasa.gov/admin/pubs/mepeis/index.htm>. NASA's Record of Decision (ROD) will also be placed on that Web site when it is issued. Anyone who desires a hard copy of NASA's ROD when it is issued also should contact Mr. Dahl.

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, Mission and Systems Management Division, Science Mission Directorate, Mail Suite 3C66, NASA Headquarters, Washington, DC 20546–0001; telephone (202) 358–4800; electronic mail mep.nepa@hq.nasa.gov.

SUPPLEMENTARY INFORMATION: With the MEP, NASA would establish a series of objectives to address the open scientific questions associated with the exploration of Mars. These objectives have been organized by the program as follows:

- Determine if life exists or has ever existed on Mars;
- Understand the current state and evolution of the atmosphere, surface, and interior of Mars; and
- Develop an understanding of Mars in support of possible future human exploration.

The purpose of the action addressed in the FPEIS is to further the scientific goals of the MEP by continuing the exploration and characterization of the planet. On the basis of the knowledge gained from prior and ongoing missions, it appears that Mars, like Earth, has experienced dynamic interactions among its atmosphere, surface, and interior that are, at least in part, related to water. Following the pathways and cycles of water has emerged as a strategy that possibly may lead to a preserved record of biological processes, as well as the character of ancient environments on Mars. In addition to understanding the history of Mars, investigations undertaken in the MEP may shed light on current environments that could support existing biological processes.

The Proposed Action (Alternative 1) would consist of a long-term program that, as a goal, sends at least one spacecraft to Mars during each launch opportunity extending through the first two decades of the twenty-first century. Efficient launch opportunities to Mars

occur approximately every 26 months. MEP missions likely would be launched on expendable launch vehicles (e.g., Delta or Atlas class) from either CCAFS, Florida, or VAFB, California. The MEP could include international missions in which NASA proposes to be a participant and that are to be launched from a foreign site.

Under the Proposed Action, the MEP would consist of a series of robotic orbital, surface, and atmospheric missions to Mars. Some spacecraft could use RPSs for continuous electrical power, RHUs for thermal control, and small quantities of radioisotopes in science instruments for experiments and instrument calibration.

Missions beyond 2011 could include the first mission to return Martian samples to Earth. As new information and techniques become available during the course of the program, the timing, focus, and objectives of future MEP missions could be redirected.

Alternatives to the Proposed Action evaluated in the FPEIS include the following:

- Under Alternative 2, NASA would continue to explore Mars through 2020, but on a less frequent, less comprehensive, mission-by-mission basis. These missions may include international partners. Any mission proposed to continue the exploration of Mars would be developed and launched within the broader context of all other missions proposed for exploring other parts of the solar system, rather than in the context of a Mars-focused program. Robotic orbital, surface, and atmospheric missions could be used to explore Mars and could include sample return missions. Landed spacecraft could use RPSs for power generation or RHUs for thermal control of temperature-sensitive components in the spacecraft. Some spacecraft may carry small quantities of radioisotopes in science instruments for experiments and for instrument calibration.

- Under the No Action Alternative, NASA would discontinue planning for and launching robotic missions to Mars through 2020. Currently operating NASA spacecraft at or en route to Mars would continue their missions to completion. New science investigations of Mars would only be made remotely from Earth-based assets (i.e., ground- or space-based observatories, or from spacecraft developed and launched to Mars by non-U.S. space agencies).

The environmental impacts of the Proposed Action and Alternatives are discussed in the FPEIS from a programmatic perspective. Because the FPEIS has been prepared during the planning stages for the MEP, specific

proposed projects and missions within the MEP are only addressed in terms of a broad, conceptual framework. Each project or mission within the MEP that would propose use of RPSs or RHUs would be the subject of additional environmental documentation. While detailed analyses and test data for each spacecraft-launch vehicle combination are not yet available, there is sufficient information from previous programs and existing NEPA documentation to assess the potential environmental impacts.

A major component of the MEP is continued planning for one or more missions that would return samples from Mars. At the time of publication of the FPEIS, preliminary concepts for a sample return mission are being studied and would continue to be refined and evaluated. A sample return mission would be the subject of separate environmental documentation, as would the location, design and operational requirements for a returned-sample receiving facility. The non-radiological environmental impacts associated with normal spacecraft launches from both CCAFS and VAFB have been addressed in previous U.S. Air Force and NASA environmental documentation. Rocket launches are discrete events that cause short-term impacts on local air quality. However, because launches are relatively infrequent events, and winds rapidly disperse and dilute the launch emissions to background concentrations, long-term effects from exhaust emissions would not be anticipated. If solid rocket motors are used, surface waters in the immediate area of the exhaust cloud might temporarily acidify from deposition of hydrogen chloride. Launching a mission during each opportunity to Mars (approximately every 26 months) under the Proposed Action or less frequently under Alternative 2 would result in negligible release of ozone-depleting chemicals with no anticipated long-term cumulative impacts.

One or more of the missions to Mars could propose the use of radioisotopes under the Proposed Action and Alternative 2. Small quantities of radioisotopes may be used for instrument calibration or to enable science experiments, and RHUs or RPSs containing varying amounts of plutonium dioxide may be used to supply heat and electric power, respectively. Under both alternatives NASA will determine the appropriate level of NEPA documentation required for any mission proposing use of radiological material. Many of the parameters that determine the risks for a specific mission are expected to be

similar to those associated with previous missions (e.g., Galileo, Ulysses, Cassini, and the Spirit and Opportunity rovers). Mission-specific factors that affect the estimated risk include the amount and type of radioactive material used in a mission, the protective features of the devices containing the radioactive material, the probability of an accident which can damage the radioactive material, and the accident environments (e.g., propellant fires, debris fragments, and blast overpressure). The risks associated with a Mars exploration mission carrying radioactive material are, therefore, expected to be similar to those estimated for earlier missions. The population and individual risks associated with prior missions that have made use of radioactive material have all been shown to be relatively small.

The FPEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(a) NASA, Ames Research Center, Moffett Field, CA 94035 (650-604-1181).

(b) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661-258-3449).

(c) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216-433-2755).

(d) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301-286-6255).

(e) NASA, Johnson Space Center, Houston, TX 77058 (281-483-8612).

(f) NASA, Kennedy Space Center, FL 32899 (321-867-9280).

(g) NASA, Langley Research Center, Hampton, VA 23681 (757-864-2497).

(h) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256-544-2030).

(i) NASA, Stennis Space Center, MS 39529 (228-688-2164).

NASA published a Notice of Availability (NOA) of the Draft PEIS (DPEIS) for the MEP in the **Federal Register** on April 22, 2004 (69 FR 21865). In addition, NASA made the DPEIS available in electronic format on its Web site. The U.S. Environmental Protection Agency published its NOA in the **Federal Register** on April 23, 2004 (69 FR 22025). NASA received ten written comment submissions during the comment period ending June 7, 2004. The comments are addressed in the FPEIS.

Jeffrey E. Sutton,

Assistant Administrator for Infrastructure and Administration.

[FR Doc. 05-7322 Filed 4-11-05; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05-071)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting**AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, April 28, 2005, 9 a.m. to 4 p.m., and Friday, April 29, 9 a.m. to 12 Noon.

ADDRESSES: Marshall Space Flight Center, Huntsville, Alabama 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, (202) 358-2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting
- Overview of Small Business Program
- Public Comment
- Panel Discussion and Review
- Office of Small and Disadvantaged Business Utilization National Program Update
- New Business

Attendees will be requested to sign a register and to comply with NASA security requirements. You **MUST** have (1) Picture ID (driver's license) and (2) proof of insurance or (rental car agreement) to receive a pass. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Fran Thompson via e-mail at Fran.Thompson@nasa.gov or by telephone at 256-544-8816. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key

participants. Visitors will be requested to sign a visitor's register.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 05-7323 Filed 4-11-05; 8:45 am]

BILLING CODE 7510-13-P**NATIONAL TRANSPORTATION SAFETY BOARD****Sunshine Act Meeting**

TIME AND DATE: 9:30 a.m., Tuesday April 19, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 7711 Highway Accident Report—Motorcoach Run-Off-The Road, Highway Accident that Occurred Near Tallulah, Louisiana, on October 13, 2003.

News Media Contact: Telephone: (202) 314-6410.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314-6305 by Friday, April 15, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at www.nts.gov.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314-6410.

Dated: April 8, 2004.

Vicky D'Onofrio,

Federal Register Liaison Coordinator.

[FR Doc. 05-7445 Filed 2-8-05; 2:08 pm]

BILLING CODE 7533-01-M**NUCLEAR REGULATORY COMMISSION**

[Docket No. STN 50-454 and License No. NPF-37]

Exelon Generation Company, LLC; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated March 2, 2005, Mr. Barry Quigley (petitioner) has requested that the NRC take action with regard to Exelon Generation Company, LLC, the licensee for Byron Station, Unit 1. The petitioner requests enforcement action for failure to comply with 10 CFR Part 50, Appendix B, Criterion XVI.

As the basis for this request, the petitioner states that the 1C cold leg loop stop isolation valve (1RC 8002C)

has been broken for at least six years and has not been repaired.

The request is being treated pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner communicated by telephone with the Nuclear Reactor Regulation petition review board on March 4, 2005, to discuss the petition. The results of that discussion were considered in the board's determination regarding the petitioner's request for immediate action and in establishing the schedule for the review of the petition. By letter dated April 5, 2005, the Director denied the petitioner's request for immediate action with respect to repair of the 1RC 8002C valve at Exelon Generation Company, LLC's Byron Station, Unit 1. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 5th day of April 2005.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5-1681 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-255]

Nuclear Management Company, LLC; Notice of Receipt and Availability of Application for Renewal of Palisades Nuclear Plant; Facility Operating License No. DPR-20 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated March

22, 2005, from Nuclear Management Company, LLC, filed pursuant to Section 104b (DPR-20) of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 54, to renew the operating license for the Palisades Nuclear Plant. Renewal of an operating license authorizes the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the Palisades Nuclear Plant (DPR-20) expires on March 24, 2011. The Palisades Nuclear Plant is a Pressure Water Reactor designed by Combustion Engineering. The unit is located near Covert, MI. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20582 or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML050940429. The ADAMS Public Electronic Reading Room is accessible from the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, the application is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>, on the NRC's Web site, while the application is under review. 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 by telephone at 1-800-397-4209, or 301-415-4737, or by email to pdr@nrc.gov.

A copy of the license renewal application for the Palisades Nuclear Plant, is also available to local residents near the Palisades Nuclear Plant, at the South Haven Memorial Library, 314 Broadway, South Haven, MI 49090.

Dated at Rockville, Maryland, this 6th day of April, 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. E5-1676 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-321, 50-366, 50-348, 50-364, 50-424, and 50-425]

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Joseph M. Farley Nuclear Plant, Units 1 and 2; Vogtle Electric Generating Plant, Units 1 and 2; Exemption

1.0 Background

The Southern Nuclear Operating Company, Inc. (SNC or the licensee), is the holder of Facility Operating Licenses No. DPR-57, NPF-5, NPF-2, NPF-8, NPF-68, and NPF-81, which authorize operation of Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch), Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley), and Vogtle Electric Generating Plant, Units 1 and 2 (Vogtle), respectively. The licenses provide, among other things, that these facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facilities consist of boiling water reactors located in Appling County in Georgia (Hatch), and pressurized water reactors in Houston County, Alabama (Farley), and Burke County, Georgia (Vogtle).

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, requires in Appendix E, Section E, that adequate provisions shall be made and described for emergency facilities and equipment, including a licensee onsite technical support center and a licensee near-site emergency operations facility (EOF) from which effective direction can be given and effective control can be exercised during an emergency. Additionally, 10 CFR 50.47(b)(3) states in part, “* * * arrangements to accommodate State and local staff at the licensee's near-site EOF have been made * * *” The Commission issued NUREG-0696, “Functional Criteria for Emergency Response Facilities,” and Supplement 1 to NUREG-0737, “Clarification of TMI Action Plan Requirements,” to provide guidance regarding acceptable methods for meeting its EOF emergency preparedness requirements. In addition, NUREG-0654/FEMA-REP-1, “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,” Evaluation Criterion H.2, states: “Each licensee shall establish an Emergency Operations Facility from

which evaluation and coordination of all licensee activities related to an emergency is carried out and from which the licensee shall provide information to Federal, State and local authorities responding to radiological emergencies in accordance with NUREG-0696, Revision 1.”

Both NUREG-0696, Table 2 and Supplement 1 to NUREG-0737, Table 1 specify that the EOF should be located between 10 and 20 miles from the site, but a primary EOF may be located closer than 10 miles if a backup EOF is located within 10 to 20 miles of the Technical Support Center. For cases where the licensee proposed an exception involving a greater deviation, and for all Corporate EOF (CEOF) proposals, the NRC staff is required to obtain Commission approval. In SNC's proposal dated October 16, 2003, and as supplemented on April 15 and August 16, 2004, the licensee requested approval to consolidate the near-site EOFs and back-up EOFs for Hatch, Farley, and Vogtle into a single EOF located at SNC's corporate location in Birmingham, Alabama.

Prior requests by other licensees to relocate EOFs to a location greater than 20 miles from associated reactor sites did not result in the NRC staff requiring an exemption to 10 CFR Part 50 Appendix E, and 10 CFR 50.47. However, the licensee's proposal to locate the EOFs in Birmingham, AL, is 1½ to 2½ times farther than any previous NRC-approved distance. At this distance, the SNC common EOF can not reasonably be considered to be “near-site.” Therefore, the NRC staff determined that an exemption to the regulations that require an EOF to be near-site is required prior to implementation of the SNC CEOF. In order to ensure that NRC actions are timely, effective, and efficient, the staff is initiating this exemption request under 10 CFR 50.12.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The

underlying purpose of the 10 CFR Part 50, Appendix E and 10 CFR 50.47(b)(3) is to provide reasonable assurance that adequate protective measures can and will be implemented in the event of a radiological emergency. Specifically, adequate protective measures are those that provide effective direction and control, protective actions for the public, and coordination of the emergency response effort with Federal, State, and local agencies.

The staff relied upon the licensee's submittals to evaluate whether the licensee's proposal to consolidate the EOF's for Hatch, Vogtle, and Farley meets the underlying purpose of 10 CFR Part 50, Appendix E and 10 CFR 50.47(b)(3). Advancements in communications, monitoring capabilities, computer technology, the familiarity of the NRC staff with the use of common EOFs, and the SNC's emergency response strategies will continue to provide reasonable assurance that adequate protective measures can and will be implemented in the event of a radiological emergency.

The common EOF in Birmingham, AL, meets the functional and availability characteristics for carrying out the functions of a "near-site" EOF. The remote location of the common EOF could aid in response to a security event as the licensee can effectively mobilize and manage its resources and communicate effectively with the site, Federal, State, and local emergency management. However, the former near-site EOFs or equivalent "near-site" facilities may be needed to accommodate an NRC site team. Therefore, as a condition of this exemption, SNC must provide a functional working space of approximately 75 square feet per person for up to 10 people; including NRC, State, and FEMA representatives at the former EOFs or equivalent "near-site" facilities. In addition, the licensee will maintain telecommunications and habitability provisions (*i.e.*, standard office lighting, furniture, heating and ventilating systems, and electrical power outlets) at these facilities to support the 10 people.

The NRC staff observed a dual-site drill on July 14, 2004, involving Farley and Hatch. The staff observed the licensee's notification process, staffing, communication, technical support, dose assessment, protective action recommendation process, coordination with offsite officials, and overall command and control. The licensee demonstrated the capability to respond to a dual-site emergency event. EOF staffing was in accordance with the SNC's procedures. The offsite agencies

received timely and accurate information, and adequate protective measures were recommended to protect the public health and safety.

In summary, the licensee's proposal to consolidate the near-site EOFs for Hatch, Farley, and Vogtle to SNC's corporate location in Birmingham, Alabama meets the underlying purpose of the rule, see 10 CFR 50.12(a)(2)(ii). As evinced in SNC's submittals the new EOF location can perform all of the functions of a "near-site" location as contemplated by the regulations. Relocation of the EOFs to the proposed site will continue to provide reasonable assurance that adequate protective measures can and will be implemented in the event of a radiological emergency. Therefore, SNC has demonstrated that special circumstances exist such that an exemption is warranted.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, as specified herein, the Commission hereby grants Southern Nuclear Operating Company, Inc., an exemption from the "near-site" requirements of 10 CFR Part 50, Appendix E, Section E.8. and 10 CFR 50.47(b)(3), subject to maintaining the functionality of the former near-site EOF or equivalent near-site facilities.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 10417).

This exemption is effective upon issuance.

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

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-1677 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix A, "General Design Criteria For Nuclear Power Plants," General Design Criteria (GDC) 57, "Closed system isolation valves," for Facility Operating License No. NPF-6, issued to Entergy Operations, Inc. (the licensee), for operation of the Arkansas Nuclear One, Unit 2 (ANO-2), located in Pope County, Arkansas. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would provide an exemption from the requirements of 10 CFR Part 50, Appendix A, GDC 57, which requires that certain lines that penetrate containment have at least one containment isolation valve (CIV) which shall either be automatic, locked closed, or capable of remote manual operation. The licensee requests an exemption in order to operate at power with certain valves in the open position. Specifically, the proposed exemption would allow ANO-2 to operate at power with the applicable manual upstream CIVs associated with the emergency feedwater (EFW) steam trap and the atmospheric dump valve (ADV) drain steam trap (*i.e.*, one applicable CIV per steam trap) in the open position.

The proposed action is in accordance with the licensee's application dated October 30, 2003, as supplemented by letters dated July 1, November 15, and December 3, 2004, and March 3, 2005.

The Need for the Proposed Action

The proposed action is needed to ensure the operability of the steam-driven EFW pump and to prevent inoperability due to condensate buildup, and to ensure that waterhammer does not damage the piping associated with the ADV due to condensate buildup.

GDC 57 states, "Each line that penetrates primary reactor containment and is neither part of the reactor coolant pressure boundary nor connected directly to the containment atmosphere shall have at least one containment

isolation valve which shall be either automatic, or locked closed, or capable of remote manual operation. This valve shall be outside containment and located as close to the containment as practical. A simple check valve may not be used as the automatic isolation valve." However, in the case of ANO-2, operating with the EFW steam trap upstream CIV closed and the ADV drain steam trap upstream CIV closed, could pose a potential challenge to the operability of the steam-driven EFW pump and could damage the piping associated with the ADV, due to condensate buildup.

Operating with the EFW steam trap and ADV drain steam trap upstream CIVs open results in having only the secondary system pressure boundary inside containment as a barrier against the release of radioactivity to the environment through the steam trap piping. However, operating with the EFW steam trap upstream CIV closed and the ADV drain steam trap upstream CIV closed could compromise the operability of the EFW pump turbine and could damage the ADV piping, due to condensate buildup. The licensee has evaluated the effects of the EFW steam trap and ADV drain steam trap upstream CIVs being open during power operation, and has shown this to have no impact on the consequences of any of the events evaluated in the Safety Analysis Report (SAR). Therefore, the licensee is requesting an exemption from the requirements of GDC 57 to keep these valves open during operation.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that, in this case, it is not necessary for the subject CIVs to be locked closed, automatic, or capable of remote manual operation, as required in GDC 57, in order to achieve the underlying purpose of GDC 57. The effects of these valves being open during power operation has been evaluated and shown to have no impact on the consequence of any of the postulated events that are evaluated in the SAR. Thus, the NRC staff finds that the operation of ANO-2 with the subject CIVs open is acceptable, and that the requested exemption from GDC 57 is justified for ANO-2.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or

consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. Installing remote manual operators on the CIVs was considered as an alternative to bring the CIVs into compliance with GDC 57. However, the staff believes that any potential safety benefit derived from installing remote manual operators on the subject CIVs would not be commensurate with the cost associated with such a modification. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to the operation of Arkansas Nuclear One, Unit 2, NUREG-0254, dated June 1977.

Agencies and Persons Consulted

In accordance with its stated policy, on January 13, 2005, the staff consulted with the Arkansas State official, Dave Baldwin of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an

environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 30, 2003, as supplemented by letters dated July 1, November 15, and December 3, 2004, and March 3, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to pdrc@nrc.gov.

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

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-1675 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Southern Nuclear Operating Company, Joseph M. Farley Nuclear Power Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix E, Section IV.F.2.b and c for Facility Operating License Nos. NPF-2 and NPF-8, issued to Southern Nuclear Operating Company (SNC or the licensee), for operation of the Joseph M. Farley Nuclear Power Plant (FNP), Units 1 and 2, located in Houston County, Alabama. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action, as described in the licensee's application for a one-time exemption to the requirements of 10 CFR Part 50, Appendix E, dated December 13, 2004, would allow the licensee to postpone the offsite full-participation emergency exercise from 2004 to 2005. The licensee's letter dated December 13, 2004, requested an exemption from Section IV.F.2.e of Appendix E to 10 CFR Part 50 regarding the full participation by each offsite authority having a role under the plan. The NRC staff determined that the requirements of Section IV.F.2.e are not applicable to the circumstances of the licensee's request and, accordingly, no exemption from those requirements is being granted. However, the NRC staff has determined that the requirements of Appendix E to 10 CFR Part 50, Sections IV.F.2.b and 2.c are applicable to the circumstances of the licensee's request and that an exemption from those requirements is appropriate. The licensee also stated in its December 13, 2004, letter that FNP will resume its normal biennial exercise cycle in 2006.

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix E, Section IV.F.2.b and c is needed because the planned full-participation exercise originally scheduled for August 18, 2004, was not performed. The Federal Emergency Management Agency (FEMA), which normally participates in the evaluated full-participation exercise, and Alabama Emergency Management Agency were unable to provide the necessary resources for the exercise due to the impact of Hurricane Charley.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed exemption will not present an undue risk to the public health and safety. The details of the NRC staff's Safety Evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation. The action relates to the exercising of the emergency response plan, which has no effect on the operation of the facility.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation

exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to the operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, dated December 1974.

Agencies and Persons Consulted

In accordance with its stated policy, on January 6, 2005, the staff consulted with the Alabama State official, Kirk Whatley of the Office of Radiation Control, Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 13, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and

Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 5th day of April 2005.

For the Nuclear Regulatory Commission.

Sean Peters,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-1679 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Southern Nuclear Operating Company; Vogtle Electric Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix E, Section IV.F.2.b and c for Facility Operating License Nos. NPF-68 and NPF-81, issued to Southern Nuclear Operating Company (SNC or the licensee), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2 located in Burke County, Georgia. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action, as described in the licensee's application for a one-time exemption to the requirements of 10 CFR Part 50, Appendix E, dated December 10, 2004, would allow the licensee to postpone the offsite full-participation emergency exercise until February 2005. The licensee's letter dated December 10, 2004, requested an exemption from Section IV.F.2.e of Appendix E to 10 CFR Part 50 regarding the requirement to conduct a biennial full-participation exercise. The NRC staff determined that the requirements of Section IV.F.2.e are not applicable to the circumstances of the licensee's request and, accordingly, no exemption

from those requirements is being granted. However, the NRC staff has determined that the requirements of Appendix E to 10 CFR Part 50, Sections IV.F.2.b and 2.c are applicable to the circumstances of the licensee's request and that an exemption from those requirements is appropriate. The licensee also stated in its December 10, 2004, letter that VEGP will resume its normal biennial exercise cycle in 2006.

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix E, Section IV.F.2.b and c is needed because the planned full-participation exercise originally scheduled for September 22, 2004, was not performed by the end of calendar year 2004. The Federal Emergency Management Agency (FEMA), which normally participates in the evaluated full-participation exercises, informed the licensee that the Georgia Emergency Management Agency was unable to provide the necessary resources for the exercise due to the impact of Hurricanes Frances, Ivan, and Jeanne.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes the proposed exemption will not present an undue risk to the public health and safety. The details of the NRC staff's Safety Evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation. The action relates to the exercising of the emergency response plan, which has no effect on the operation of the facility.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in NUREG-1087, "Final Environmental Statement related to the operation of the VEGP, Units 1 and 2," dated December 1985.

Agencies and Persons Consulted

In accordance with its stated policy, on January 6, 2005, the NRC staff consulted with the Georgia State official, Mr. Jim Hardeman of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 10, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 5th day of April, 2005.

For the Nuclear Regulatory Commission.

Christopher Gratton, Sr.,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-1680 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Decommissioning Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Decommissioning Directorate of the U.S. Nuclear Regulatory Commission's (NRC's) Office of Nuclear Material Safety and Safeguards is holding a Decommissioning Workshop on April 20 and 21, 2005, at The Shady Grove Center in Rockville, Maryland. The purposes of the Workshop are to: (1) Inform stakeholders of NRC's Integrated Decommissioning Improvement Plan (IDIP), including planned regulatory and program management improvements; (2) discuss the development of guidance resulting from the NRC staff's 2003 analysis of issues impacting the implementation of the License Termination Rule, and; (3) solicit feedback and suggestions from stakeholders on guidance, decommissioning lessons learned, and the decommissioning process in general. Public participation is encouraged at the Workshop to provide feedback and perspectives on issues of importance to the work of the NRC's Decommissioning Directorate.

DATES: The workshop will be held from 8 a.m. to 5:15 p.m. on April 20, 2005, and from 8 a.m. to 5 p.m. on April 21, 2005.

ADDRESSES: The workshop will be held at The Shady Grove Center, The Universities at Shady Grove, 9630 Gudelsky Drive, Rockville, MD, 20874.

FOR FURTHER INFORMATION CONTACT: Derek Widmayer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-6677; Fax (301) 415-5398; electronic mail at daw@nrc.gov.

SUPPLEMENTARY INFORMATION: Information on registering for the Workshop, finding overnight accommodations, an up-to-date agenda, and background information on some of the topics to be discussed at the Workshop, is at the following link on the NRC's Web site: <http://www.nrc.gov/>

public-involve/conference-symposia/decommissioning.html.

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

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5-1678 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of April 11, 18, 25, May 2, 9, 16, 2005.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 11, 2005

There are no meetings scheduled for the Week of April 11, 2005.

Week of April 18, 2005—Tentative

Tuesday, April 19, 2005

9 a.m.

Discussion of Enforcement Issue
(Closed—Ex. 5)

9:30 a.m.

Discussion of Security Issues
(Closed—Ex. 1)

Wednesday, April 20, 2005

9:25 a.m.

Affirmation Session (Public Meeting)
(Tentative)

- a. (1) Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52-007-ESP; (2) Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52-008-ESP; (3) System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52-009-ESP; (4) Louisiana Energy Services, L.P. (National Enrichment Facility), Docket No. 70-3103-ML; (5) USEC Inc. (American Centrifuge Plant), Docket No. 70-7004 (Tentative)

9:30 a.m.

Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela McIntosh, 301-415-5030)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

1:30 p.m.

Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Laura Gerke, 301-415-4099)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Thursday, April 21, 2005

1:30 p.m.

Discussion of Security Issues
(Closed—Ex. 1)

Week of April 25, 2005—Tentative

Tuesday, April 26, 2005

9:30 a.m.

Briefing on Grid Stability and Offsite Power Issues (Public Meeting)
(Contact: John Lamb, 301-415-1446)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of May 2, 2005—Tentative

There are no meetings scheduled for the Week of May 2, 2005.

Week of May 9, 2005—Tentative

Wednesday, May 11, 2005

10:30 a.m.

All Employees Meeting (Public Meeting)

1:30 p.m.

All Employees Meeting (Public Meeting)

Week of May 16, 2005—Tentative

There are no meetings scheduled for the Week of May 16, 2005.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Dave Gamberoni, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301-415-7080, TDD: 301-415-2100, or by e-mail at aks@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: April 7, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05-7368 Filed 4-8-05; 9:21 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses

Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 18, 2005, through March 31, 2005. The last biweekly notice was published on March 29, 2005 (70 FR 15940).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an

accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located

at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/

requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services:

Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HearingDocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by email to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request:
December 17, 2004.

Description of amendment request:
The proposed changes would revise Appendix B, Environmental Protection Plan (EPP), non-radiological, of the Facility Operating License (FOL) for Clinton Power Station. The proposed changes would retain certain elements of the EPP and would revise others by clarifying a number of items without

changing the purpose, by removing the requirement for an annual report, by updating terminology, by deleting obsolete program information, and by standardizing the wording in the EPP.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The Environmental Protection Plans (EPPs) are concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and have no effect on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by the environmental monitoring and reporting required by the EPPs. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. No environmental protection requirements established by other Federal, State, or local agencies are being reduced by this license amendment request.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes are administrative in nature. Environmental monitoring and reporting have no effect on accident initiation. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. There will be no effect on the types or amount of any effluents released from the plants.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. These proposed changes are administrative in nature. Changes in the annual reporting requirements and other administrative revisions in accordance with this submittal have no impact on margin of safety. Environmental evaluations will still be performed, when necessary, on changes to plant design or operations to assess the effect on environmental protection. Review, analysis and investigation of Unusual and Important Environmental Events will still be performed in accordance with the Exelon and AmerGen Corrective Action Program.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Section Chief: Gene Y. Suh.

AmerGen Energy Company, LLC, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania; Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request:
December 17, 2004.

Description of amendment request:
The proposed changes would revise Appendix B, Environmental Protection Plan (EPP), non-radiological, of the Facility Operating License (FOL) for each of the units listed above. The proposed changes would retain certain elements of the EPPs and would revise others by clarifying a number of items without changing the purpose, by removing the requirement for an annual report, by updating terminology, by deleting obsolete program information, and by standardizing the wording in the EPPs.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The Environmental Protection Plans (EPPs) are concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and have no effect on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by the environmental monitoring and reporting required by the EPPs. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. No environmental protection requirements established by other Federal, State, or local agencies are being reduced by this license amendment request.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes are administrative in nature. Environmental

monitoring and reporting have no effect on accident initiation. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. There will be no effect on the types or amount of any effluents released from the plants.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. These proposed changes are administrative in nature. Changes in the annual reporting requirements and other administrative revisions in accordance with this submittal have no impact on margin of safety. Environmental evaluations will still be performed, when necessary, on changes to plant design or operations to assess the effect on environmental protection. Review, analysis and investigation of Unusual and Important Environmental Events will still be performed in accordance with the Exelon and AmerGen Corrective Action Program.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Darrell J. Roberts.

AmerGen Energy Company, LLC, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request:
December 17, 2004.

Description of amendment request: The proposed changes would revise Appendix B, Environmental Protection Plan (EPP), non-radiological, of the Facility Operating License (FOL) for Clinton Power Station. The proposed changes would retain certain elements of the EPP and would revise others by clarifying a number of items without changing the purpose, by removing the requirement for an annual report, by updating terminology, by deleting obsolete program information, and by standardizing the wording in the EPP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The Environmental Protection Plans (EPPs) are concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and have no effect on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by the environmental monitoring and reporting required by the EPPs. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. No environmental protection requirements established by other Federal, State, or local agencies are being reduced by this license amendment request.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes are administrative in nature. Environmental monitoring and reporting have no effect on accident initiation. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. There will be no effect on the types or amount of any effluents released from the plants.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. These proposed changes are administrative in nature. Changes in the annual reporting requirements and other administrative revisions in accordance with this submittal have no impact on margin of safety. Environmental evaluations will still be performed, when necessary, on changes to plant design or operations to assess the effect on environmental protection. Review, analysis and investigation of Unusual and Important Environmental Events will still be performed in accordance with the Exelon and AmerGen Corrective Action Program.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

AmerGen Energy Company, LLC, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 25, 2005.

Description of amendment request: The licensee proposed to revise Technical Specifications Section 3.7.A.3.a to reflect the capability upgrade of one of the offsite power lines from 69 kV to 230 kV by the owner of this line, Conective Energy Company. The offsite alternating current (AC) power normally supplies the station auxiliaries through the startup transformer. After the station is operating and supplying electric power to the grid, the offsite power acts as a standby source of power. The proposed change involves transmission lines external to the station, and would involve no physical or procedural changes to onsite equipment. There are no surveillance requirements associated with the offsite power sources, and no change in this regard is proposed.

The proposed amendment would also include a clarification change to Section 3.7.A.2 to distinguish between the two current 230 kV lines (N-line and O-line) from the new 230 kV S-line.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change upgrades the existing 69 kV offsite power supply line to a 230 kV supply line. An evaluation performed to assess the effects of the upgrade determined that upgrading the 69 kV line to a 230 kV line does not degrade the reliability of the transmission interconnection with the Oyster Creek plant and therefore does not increase the probability of the occurrence of an accident. The proposed change will provide an equivalent or better level of reliability of the offsite power supply system. Since there is no reduction in the reliability of the offsite power supply system, there will be no increase in the potential for fuel failure and there is no increase in the consequences of any accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change upgrades the existing 69 kV offsite power supply line to a 230 kV

supply line. An evaluation performed to assess the effects of the upgrade determined that upgrading the 69 kV line to a 230 kV line does not degrade the reliability of the transmission interconnection with the Oyster Creek plant. The proposed change does not involve the use or installation of new plant equipment. Installed plant equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?
Response: No.

The proposed change upgrades the existing 69 kV offsite power supply line to a 230 kV supply line. The active or passive failure mechanisms that could adversely impact the consequences of an accident are not affected by this proposed change. All analyzed transient results remain well within the design values for structures, systems and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenton, IL 60555.

NRC Section Chief: Richard J. Laufer.

AmerGen Energy Company, LLC, et al., Docket No. 50-289, Three Mile Island Station, Unit 1, Dauphine County, Pennsylvania; Docket No. 50-461, Clinton Power Station Unit 1, DeWitt County, Illinois

Date of amendment request: October 21, 2004, as supplemented by letter dated January 4, 2005.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) to submit monthly operating reports and annual occupational radiation exposure reports. The changes are consistent with Revision 1 of Nuclear Regulatory Commission (NRC) approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-369, "Removal of Monthly Operating and Occupational Radiation Exposure Report." The availability of this TS improvement was announced in the **Federal Register** (69 FR 35067) on June

23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 21, 2004, as supplemented by letter dated January 4, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based on the reasoning presented above and the previous discussion of the amendment request, the NRC staff proposes to determine that the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel,

Exelon Generation Company, LLC, 4300 Winfield Road, Warrenton, IL 60555.

NRC Section Chief: Richard J. Laufer.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50-245, 50-336, and 50-423, Millstone Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: December 21, 2004.

Description of amendment request: The requested change will delete Technical Specification (TS) requirements for annual Occupational Radiation Exposure Reports (all Units), annual report regarding challenges to pressurizer relief and safety valves (Unit Nos. 2 and 3), and Monthly Operating Reports (Unit Nos. 2 and 3).

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated December 21, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the TSs reporting requirements to provide a monthly operating letter report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?
Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significance hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.
NRC Section Chief: Darrell J. Roberts.

Exelon Generation Company, LLC, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request:
December 17, 2004.

Description of amendment request:
The proposed changes would revise Appendix B, Environmental Protection Plan (EPP), non-radiological, of the Facility Operating License (FOL) for each of the units listed above. The proposed changes would retain certain elements of the EPPs and would revise others by clarifying a number of items without changing the purpose, by removing the requirement for an annual report, by updating terminology, by deleting obsolete program information, and by standardizing the wording in the EPPs.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The Environmental Protection Plans (EPPs) are concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and have no effect on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by

the environmental monitoring and reporting required by the EPPs. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. No environmental protection requirements established by other Federal, State, or local agencies are being reduced by this license amendment request.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes are administrative in nature. Environmental monitoring and reporting have no effect on accident initiation. The deletion of portions of Appendix B of the FOL will not impact the design or operation of any plant system or component. There will be no effect on the types or amount of any effluents released from the plants.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. These proposed changes are administrative in nature. Changes in the annual reporting requirements and other administrative revisions in accordance with this submittal have no impact on margin of safety. Environmental evaluations will still be performed, when necessary, on changes to plant design or operations to assess the effect on environmental protection. Review, analysis and investigation of Unusual and Important Environmental Events will still be performed in accordance with the Exelon and AmerGen Corrective Action Program.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

Exelon Generation Company, LLC, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, IL

Date of amendment request:
December 9, 2004.

Description of amendment request:
The proposed amendment requests new actions for an inoperable battery charger and alternate battery charger testing criteria for Limiting Condition for Operation (LCO) 3.8.4 and 3.8.5. The proposed changes also includes the relocation of a number of Surveillance Requirements (SR) in Technical

Specification (TS) Section 3.8.4 that perform preventative maintenance on the safety related batteries to a licensee-controlled program. It is proposed that TS Table 3.8.6-1, "Battery Cell Parameter Requirements," be relocated to a licensee-controlled program, and specific actions with associated completion times for out-of-limits conditions for battery cell voltage, electrolyte level, and electrolyte temperature be added to TS Section 3.8.6. In addition, specific SR are being proposed for verification of these parameters.

A new program is being proposed for the maintenance and monitoring of station batteries based on the recommendations of Institute of Electrical and Electronics Engineers (IEEE) Standard 450-1995, "IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications." The items proposed to be relocated will be contained within this new program.

The proposed changes will allow additional time for maintenance and testing of the normal 250 volts direct current (VDC) and 125 VDC divisional battery chargers. In addition, relocation of the preventative maintenance SR and battery cell parameter requirements to a licensee-controlled program will continue to provide an adequate level of control of these requirements, assure the batteries are maintained at current levels of performance, allow flexibility to monitor and control these limits at values directly related to the batteries' ability to perform their assumed function, and allow the TS to focus on parameter value degradation that approach levels that may impact battery operability.

Basis for proposed no significant hazards consideration determination:
As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes restructure the Technical Specifications (TS) for the direct current (DC) electrical power system. The proposed changes add actions to specifically address battery charger inoperability. The DC electrical power system, including the associated battery chargers, is not an initiator of any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR). Operation in accordance with the proposed TS ensures that the DC electrical power system is capable of performing its function as described in the UFSAR.

Therefore, the mitigative functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis.

The relocation of preventative maintenance surveillances, and certain operating limits and actions, to a newly-created licensee-controlled Battery Monitoring and Maintenance Program will not challenge the ability of the DC electrical power system to perform its design function. Appropriate monitoring and maintenance, consistent with industry standards, will continue to be performed. In addition, the DC electrical power system is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the DC electrical power system.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by the proposed changes. Therefore, the consequences of previously analyzed accidents will not increase by implementing these changes.

Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Criterion 2—The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes involve restructuring the TS for the DC electrical power system. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the UFSAR. Rather, the DC electrical power system is used to supply equipment used to mitigate an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed changes do not involve a significant reduction in the margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new battery maintenance and monitoring program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical sources will continue to provide adequate power to safety related loads in accordance with analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

Exelon Generation Company, LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: October 21, 2004, as supplemented by letter dated January 4, 2005.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) to submit monthly operating reports and annual occupational radiation exposure reports. The changes are consistent with Revision 1 of Nuclear Regulatory Commission (NRC) approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-369, "Removal of Monthly Operating and Occupational Radiation Exposure Report." The availability of this TS improvement was announced in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 36067). The licensee affirmed the applicability of the model NSHC determination in its application dated October 21, 2004, as supplemented by letter dated January 4, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and

does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—Does the proposed change involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based on the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Darrell J. Roberts.

PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 10, 2005.

Description of amendment request: The proposed change would revise Technical Specification (TS) Surveillance Requirements for Salem Nuclear Generating Station Unit Nos. 1 and 2. Specifically, TS 4.5.3.2.b would be modified to remove the restriction of operating a safety injection pump or charging pump for testing purposes only. Additionally, the proposed change would allow testing of the pumps, provided the pump being tested is in a recirculation flow path with the manual discharge valve or disabled automatic valve(s) in flow paths to the reactor coolant system (RCS) closed. The proposed change would provide the licensee the flexibility to operate the safety injection and charging pumps while the pumps are isolated from the RCS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

In Mode 4 with the RCS coolant temperature less than 312 °F or in Modes 5 and 6 when the head is on the reactor vessel, there is a potential risk of a low temperature overpressurization condition. Mass additions of coolant by the safety injection and charging pumps could cause such an event to the extent that these pump flows exceed the ability of a single overpressure protection relief valve to protect the system. In order to eliminate this possibility, provisions are made to allow a maximum of one pump to be in service with the other pumps disabled except for testing with the pump isolated from the RCS. Provisions are made to ensure that a pump being tested cannot inject into the vessel. The proposed change merely adds flexibility to safety injection pump operation while continuing to assure isolation from the RCS. The proposed change continues to offer an equivalent means of affording the required protection against low temperature overpressurization.

Based upon the above, the proposed change will not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change permits a minor change in the operation of the plant by adding flexibility to safety injection pump operation while continuing to assure isolation from the RCS. The proposed change continues to offer an equivalent means of affording the required protection against low temperature overpressurization. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR [updated final safety analysis report]. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, and no significant changes in operations are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not alter any assumptions, initial conditions, or results of any accident analyses. The proposed change maintains the level of protection against a low temperature overpressurization condition.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Darrell J. Roberts.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 20, 2004.

Description of amendment request: The proposed amendment would revise the surveillance requirements to verify the acceptability of new diesel fuel oil for use, prior to addition to the storage tanks, and to stored fuel oil.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve the expansion of the test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks, to allow a water and sediment content test to be performed. In addition, a limit is being added for the amount of particulate allowed in stored fuel, and the specific allowance to utilize the exceptions of SR 3.0.2 and SR 3.0.3.

Allowing a water and sediment content test to be performed to establish the acceptability of new fuel oil, including a limit for particulate for the stored fuel oil, and adding the allowance of SR 3.0.2 and SR 3.0.3 will not affect nor degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident

previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve the expansion of the test used to establish the acceptability of new fuel oil for use prior to addition to the storage tanks, to allow a water and sediment content test to be performed. In addition, a limit is being added for the amount of particulate allowed in stored fuel, and the specific allowance to utilize the exceptions of SR 3.0.2 and SR 3.0.3.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis and licensing basis.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involve the expansion of the test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks, to allow a water and sediment content test to be performed. In addition, a limit is being added for the amount of particulate allowed in stored fuel, and the specific allowance to utilize the exceptions of SR 3.0.2 and SR 3.0.3.

The level of safety of facility operation is unaffected by the proposed changes since there is no change in the intent of the TS requirements of assuring fuel oil is of the appropriate quality for emergency DG use. The response of the plant systems to accidents and transients reported in the Updated Final Safety Analysis Report (UFSAR) is unaffected by this change. Therefore, accident analysis acceptance criteria are not affected.

The proposed changes do not reduce a margin of safety since they have no impact on any transient or safety analysis assumptions. Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW.,

Suite 1000 South, Washington, DC 20005.

NRC Section Chief: Richard J. Laufer.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by email to pdr@nrc.gov.

Consumers Energy Company, Docket No. 50-155, Big Rock Point Nuclear Plant, Charlevoix County, Michigan

Date of application for amendment: April 1, 2003, as supplemented by letter dated July 1, 2004.

Brief description of amendment: The amendment adds a license condition which approves the License Termination Plan (LTP) for the Big Rock Point Nuclear Plant, and provides the criteria by which the licensee may make changes to the LTP without prior NRC approval.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance.

Amendment No.: 126.

Facility Operating License No. DPR-6: The amendment adds a condition to the Facility Operating License.

Date of initial notice in Federal Register: January 21, 2003 (68 FR 2800), and November 25, 2003 (68 FR 66133). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2005.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of application for amendment: September 16, 2004.

Brief description of amendment: The amendment revised Technical Specification Surveillance Requirement (SR) 3.7.6.1 that allows a 5 percent stroke rather than a complete (100 percent) stroke of each Turbine Bypass Valve (TBV), and extends the surveillance frequency from 92 days to 120 days. The complete stroke verification currently required by SR 3.7.6.1 once after each entry into MODE 4 would be retained and renumbered SR 3.7.6.2. The system functional test (current SR 3.7.6.2) and the TBV response time test (current SR 3.7.6.3) were renumbered as SR 3.7.6.3 and SR 3.7.6.4, respectively.

Date of issuance: March 29, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 165.

Facility Operating License No. NPF-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 9, 2004 (69 FR 64985).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50-423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 10, 2005, as supplemented March 23, 2005.

Brief description of amendment: The amendment extends the allowed outage time (AOT) for the emergency diesel generator (EDG) load sequencer (EGLS) from 6 to 12 hours.

Date of issuance: March 29, 2005.

Effective date: As of the date of issuance and shall be implemented within 5 days from the date of issuance.

Amendment No.: 221.

Facility Operating License No. NPF-49: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 22, 2005 (70 FR 8641).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: September 29, 2003, as supplemented by letters dated April 22, May 20, June 9, and July 29, 2004.

Brief description of amendments: The amendment revises the Technical Specification 3.7.15 spent fuel pool (SFP) storage criteria based upon fuel type, fuel enrichment, burnup, cooling time and partial credit for soluble boron in the SFP. The amendment also allows for the safe storage of fuel assemblies with a nominal enrichment of Uranium-235 up to 5.00 weight percent. In addition, this amendment decreases the required soluble boron credit, that provides an acceptable margin of subcriticality in the McGuire Nuclear Station (McGuire), Units 1 and 2, spent fuel storage pools.

Date of issuance: March 17, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 227 and 207.

Renewed Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 14, 2004 (69 FR 55469).

The supplements dated April 22, May 20, June 9, and July 29, 2004, provided additional information that clarified the

application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: September 28, 2004.

Brief description of amendments: The amendments eliminate the technical specification requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: March 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 342, 344, & 343.

Renewed Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 23, 2004 (69 FR 68182).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 2, 2004, as supplemented on December 8, 15, and 22, 2004, and January 5 and 28, February 11 and 22, and March 14, 2005.

Description of amendment request: The amendment revises the Technical Specifications (TSs) to fully adopt the alternative source term (AST) methodology for design-basis accident dose consequence evaluations in accordance with 10 CFR 50.67. Specifically, the amendment revises the TS Definition regarding dose equivalent iodine and TS Section 5.5.10, "Ventilation Filter Testing Program (VFTP)." The AST methodology for the fuel-handling accident was previously approved in Amendment No. 215, dated March 17, 2003.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 224.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 31, 2004 (69 FR 53104).

The December 8, 15, and 22, 2004, and January 5 and 28, February 11 and 22, and March 14, 2005, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 3, 2004, as supplemented on November 18 and December 15, 2004 (2), and February 3 and 11, 2005.

Brief description of amendment: The amendment revises the operating license and Technical Specifications (TSs) to authorize an increase in the maximum steady-state reactor core power level from 3067.4 megawatt thermal (MWT) to 3216 MWT. This represents a nominal increase of 4.85% rated thermal power. The amendment also revises the TSs to relocate certain cycle-specific parameters to the Core Operating Limits Report (COLR) by adopting TS Task Force Traveler TSTF-339, "Relocate Technical Specification Parameters to the COLR." In addition, the amendment revises several allowable values in TS Table 3.3.1-1, "Reactor Protection System (RPS) Instrumentation," and Table 3.3.2-1, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation."

Date of issuance: March 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 225.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications and License.

Date of initial notice in Federal Register: August 31, 2004 (69 FR 53105). The November 18 and December 15, 2004, and February 3 and 11, 2005, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's

original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: September 1, 2004.

Brief description of amendment: The amendment deleted the Technical Specification (TS) requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 212.

Facility Operating License No. DPR-35: The amendment revised the TSs.

Date of initial notice in Federal Register: November 9, 2004 (69 FR 64989).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: April 14, 2004, as supplemented on November 10, 2004.

Brief description of amendment: This amendment revised Technical Specification (TS) Section 4.7.A.2.a, "Primary Containment Integrity," to allow a one-time interval extension of no more than 5 years for the Type A, Integrated Leakage Rate Test.

Date of issuance: March 30, 2005.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 213.

Facility Operating License No. DPR-35: The amendment revised the TSs.

Date of initial notice in Federal Register: October 26, 2004 (69 FR 62473).

The November 10, 2004, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The

Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 16, 2003 as supplemented by letter dated March 15, 2004.

Brief description of amendment: This amendment relocated the current definition of surveillance frequency to new Technical Specification (TS) Sections 4.0.2 and 4.0.3, and revises the requirements for a missed surveillance in TS Section 4.0.3. This change allows a longer period of time to perform a missed surveillance. The time is extended from the current limit of up to 24 hours or up to the limit of the specified frequency, whichever is less; to up to 24 hours or up to the limit of the specified frequency, whichever is greater. In conjunction with the proposed change, this amendment added the requirements for a TS Bases Control Program which is consistent with Section 5.5 of NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR [boiling-water reactor]/4". In addition, the current definition of surveillance frequency (definition "Y") has been relocated to new TS Sections 4.0.2 and 4.0.3. The current definition of surveillance interval (definition "Z") has been re-worded and relocated to new TS Section 4.0.1 consistent with Surveillance Requirement 3.0.1 of NUREG-1433. Appropriate TS Bases, also consistent with NUREG-1433, have been adopted for the new sections. An editorial change has been made to TS 6.7.C to have the reference for the definition of surveillance frequency refer to the new Section 4.0.2.

Date of Issuance: March 16, 2005.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 221.

Facility Operating License No. DPR-28: The amendment revised the TSs.

Date of initial notice in Federal Register: December 21, 2004 (69 FR 76491).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 16, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 1, 2004.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) by eliminating the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of Issuance: March 22, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 222.

Facility Operating License No. DPR-28: Amendment revised the TSs.

Date of initial notice in Federal Register: October 12, 2004 (69 FR 60680).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: July 31, 2003, as supplemented on October 10, November 7 (2 letters), November 20, December 11 (2 letters), and December 30, 2003, and February 10, February 18, February 25, March 17, May 12, and July 20, 2004.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) and licensing basis to incorporate a full-scope application of an alternative source term methodology in accordance with Title 10 of the Code of Federal Regulations Section 50.67, "Accident Source Term."

Date of Issuance: March 29, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 223.

Facility Operating License No. DPR-28: The Amendment revised the TSs.

Date of initial notice in Federal Register: November 25, 2003 (68 FR 66135). The supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 29, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: May 12, 2004, as completely superseded by application dated July 8, 2004, as supplemented by letters dated October 14, 2004, and January 19 and March 7, 2005.

Brief description of amendment: The amendment modifies the analytical methods referenced in Technical Specification (TS) 6.6.5 by replacing the existing physics code package with a Westinghouse Nuclear Physics code package and incorporating the methodologies that will support the use of ZIRLO fuel cladding and zirconium diboride burnable absorber coating on uranium dioxide fuel pellets. The amendment also implements TS Task Force Traveler No. 363, to revise the way analytical methods are listed in TS 6.6.5 by identifying the topical report numbers and titles only, and relocating specific revisions, supplement numbers, and approval dates to the core operating limits report. The portion of the application requesting to delete the TS Index will continue to be reviewed and will not be included in this amendment. Therefore, the correlating Index page will be revised as necessary.

Date of issuance: March 23, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 257.

Facility Operating License No. NPF-6: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 31, 2004 (69 FR 53106).

The supplements dated October 14, 2004, and January 19 and March 7, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit 2 (ANO-2), Pope County, Arkansas

Date of amendment request: July 8, 2004, as supplemented by letters dated February 2, March 8, and March 28, 2005.

Brief description of amendment: The amendment removes the automatic

closure interlock (ACI) function and deletes the Technical Specification surveillance requirement associated with the shutdown cooling system ACI. The change also provides a higher pressure setpoint for the open permissive interlock (OPI) and maintains continued functionality of the OPI with a license condition.

Date of issuance: March 30, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 258.

Facility Operating License Nos. NPF-6: The amendments revise the Technical Specifications.

Date of initial notice in Federal Register: August 31, 2004 (69 FR 53106).

The supplements dated February 2, March 8, and March 28, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated: March 30, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 2004, and supplemented by letters dated August 19, September 1, September 14, October 13, and October 19, 2004.

Brief description of amendment: The change implements a full-scope alternative source term (AST) for determining accident offsite doses and accident doses to control room personnel.

Date of issuance: March 29, 2005.

Effective date: As of the date of issuance and shall be implemented prior to restart from refueling outage 13 in the spring of 2005 in order to update the design assumption regarding in-leakage, resolve concerns identified in Generic Letter 2003-01, and support the power uprate implementation.

Amendment No.: 198.

Facility Operating License No. NPF-38: The amendment revised the Updated Final Safety Analyses Report.

Date of initial notice in Federal Register: August 19, 2004 (69 FR 51488). The supplements dated August 19, September 1, September 14, October 13, and October 19, 2004, provided additional information that clarified the application, did not expand the scope of

the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Date of application for amendments: April 30, 2004.

Brief description of amendments: The amendments modify requirements in Technical Specifications (TS) to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF-359, "Increased Flexibility in Mode Restraints."

Date of issuance: March 18, 2005.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 171, 157.

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 26, 2004 (69 FR 62474).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 18, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: February 27, 2004, as supplemented September 13, 2004.

Brief description of amendments: These amendments allowed for the activation of the trip outputs of the previously installed oscillation power range monitor portion of the power range neutron monitoring system. Specifically, this change revised Technical Specifications (TSs) Sections 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," 3.4.1, "Recirculation Loops Operating," and their associated TS Bases, and 5.6.5, "Core Operating Limits Report (COLR)." In addition, the change deleted the Interim Corrective Action requirements from the Recirculation Loops Operating TSs.

Date of issuance: March 21, 2005.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 251 and 254.

Renewed Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 2004 (69 FR 19570). The September 13, 2004, letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2 (BVPS-2), Beaver County, Pennsylvania

Date of application for amendment: July 23, 2004, as supplemented by letter dated December 8, 2004.

Brief description of amendment: The amendment revised the BVPS-2 Technical Specifications (TSs) eliminating periodic response time testing requirements on selected sensors and selected protection channel components and permits the option of either measuring or verifying the response times by means other than testing.

Date of issuance: March 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 147.

Facility Operating License No. NPF-73: Amendment revised the TSs.

Date of initial notice in Federal Register: August 31, 2004 (69 FR 53109).

The supplement dated December 8, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2005.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 22, 2004.

Brief description of amendment: The amendment eliminates the requirements

to submit monthly operating reports and occupational radiation exposure reports.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 211.

Facility Operating License No. DPR-46: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2891).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 27, 2004, as supplemented by letters dated August 9, 2004, and January 7, 2005.

Brief description of amendment: The amendment modifies license condition 2.C.(2)(b) to remove the requirement to perform a full main steam isolation valve closure test associated with extended power uprate. The additional request in the application to modify licensee condition 2.C.(2)(b) to eliminate the requirement to perform a main generator load reject test is not included in this amendment and will be addressed by separate correspondence.

Date of issuance: March 17, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 257.

Facility Operating License No. DPR-49: The amendment revised the Operating License.

Date of initial notice in Federal Register: April, 13 2004 (69 FR 19572).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 25, 2004, as supplemented February 10, 2005.

Brief description of amendment: The amendment revises the Technical

Specifications (TSs) by adding the demand step counters to the TSs and adding a note to allow for a soak time subsequent to substantial rod motion for the rods that exceed their position limits before invoking the TS requirements.

Date of issuance: March 17, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 181.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 6, 2004 (69 FR 40675).

The supplement dated February 10, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated. 0

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 8, 2004.

Brief description of amendment: This amendment deleted the Technical Specifications associated with the hydrogen monitors.

Date of issuance: March 22, 2005.

Effective date: March 22, 2005, and shall be implemented within 120 days from the date of issuance.

Amendment No.: 234.

Renewed Facility Operating License No. DPR-40: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2894).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 1, 2004.

Brief description of amendments: The amendment eliminates the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1-180; Unit 2-182.

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2894).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2005. No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: September 22, 2004.

Brief description of amendments: The amendments modified Technical Specifications (TS) requirements to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF-359, "Increased Flexibility in Mode Restraints."

Date of issuance: March 18, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 219 and 195.

Facility Operating License Nos. NPF-14 and NPF-22: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2895).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 18, 2005.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: March 4, 2004.

Brief description of amendments: The proposed amendment revised the SSES 1 and 2 Technical Specification Table 3.3.5.1-1 to clarify that four low-pressure coolant injection pump discharge pressure-high channels are required for each automatic depressurization system trip function.

Date of issuance: March 29, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 220 and 196.

Facility Operating License Nos. NPF-14 and NPF-22: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: April 27, 2004 (69 FR 22881).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 29, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: September 8, 2004.

Brief description of amendment: These amendments delete the Technical Specifications associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 238 and 219.

Renewed Facility Operating License Nos. NPF-4 and NPF-7: Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register***: January 18, 2005 (70 FR 2902).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia *Date of application for amendment*:

December 21, 2004.

Brief description of amendment: These amendments eliminate the requirements to submit monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 239 and 220.

Renewed Facility Operating License Nos. NPF-4 and NPF-7: Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register***: January 18, 2005 (70 FR 2903).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50-280 and 50-281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: September 8, 2004.

Brief Description of amendments: These amendments delete the Technical Specifications associated with hydrogen monitors.

Date of issuance: March 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 239 and 238.

Renewed Facility Operating License Nos. DPR-32 and DPR-37: Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register***: January 18, 2005 (70 FR 2902).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50-280 and 50-281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: December 21, 2004.

Brief Description of amendments: These amendments revise the Technical Specifications by eliminating the requirements to submit monthly operating reports and occupational radiation exposure reports.

Date of issuance: March 22, 2005.

Effective date: March 22, 2005.

Amendment Nos.: 240 and 239.

Renewed Facility Operating License Nos. DPR-32 and DPR-37: Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register***: January 18, 2005 (70 FR 2903).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the

amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdrc@nrc.gov.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309,

which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737, or by e-mail to pdrc@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a

material issue of law or fact.¹ Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory

¹ To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)-(viii).

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 9, 2005.

Description of amendment request: This amendment revises TS 3/4.7.6, "Control Room Normal and Emergency Air Handling System," and associated Bases, to provide an Action when the Control Room Normal and Emergency Air Handling System ventilation boundary is inoperable and a note that allows the ventilation boundary to be open, intermittently under administrative controls.

Date of issuance: March 21, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 171.

Renewed Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Public

Notices were given in the Columbia The State on March 16 and 17 and in the Newberry Observer on March 16 and 18. The notices provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated March 21, 2005.

Attorney for licensee: Thomas Eppink.
NRC Section Chief: John A. Nakoski.

Dated at Rockville, Maryland, this 4th day of April 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05-6996 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter (GL) to request that addressees submit information to the NRC concerning the status of their compliance with GDC 17, 10 CFR 50.63, 10 CFR 50.65, and plant technical specifications governing electric power in accordance with 10 CFR 50.54(f). This request is to obtain information from addressees in four areas: (1) Use of nuclear power plant/transmission system operator protocols and real time contingency analysis programs to monitor grid conditions to determine operability of offsite power systems under plant technical specifications, (2) use of nuclear power plant/transmission system operator protocols and real time contingency analysis programs to monitor grid conditions for consideration in maintenance risk assessments, (3) offsite power restoration procedures in accordance with Section 2 of Regulatory Guide 1.155, "Station Blackout," and (4) losses of offsite power caused by grid failures at a frequency of ≥ 20 Years in accordance with Regulatory Guide 1.155.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML050810504.

DATES: Comment period expires June 13, 2005. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555-0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T-6D59), Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: John G. Lamb at 301-415-1446 or by e-mail at *jgl1@nrc.gov* or Jose Calvo at 301-415-2774 or by e-mail at *jac7@nrc.gov*.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 2005-XX: Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power

ADDRESSES: All holders of operating licenses for nuclear power reactors except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose: In order to determine if compliance is being maintained with U.S. Nuclear Regulatory Commission (NRC) regulatory requirements governing electric power for your plant, the NRC is issuing this generic letter to obtain information from its licensees in four areas:

(1) Use of nuclear power plant/transmission system operator protocols and real time contingency analysis programs to monitor grid conditions to determine operability of offsite power systems under plant technical specifications

(2) Use of nuclear power plant/transmission system operator protocols and real time contingency analysis programs to monitor grid conditions for consideration in maintenance risk assessments

(3) Offsite power restoration procedures in accordance with Section 2 of Regulatory Guide 1.155, "Station Blackout"

(4) Losses of offsite power caused by grid failures at a frequency of ≥ 20 Years

in accordance with Regulatory Guide 1.155.

Pursuant to 10 CFR 50.54(f), addressees are required to submit a written response to this generic letter.

Background

Based on information obtained from inspections and risk insights developed by an internal NRC expert panel, and further described below, the staff is concerned with several conditions associated with assurance of grid reliability such that compliance with applicable regulations may not be assured. Use of long term periodic grid studies and informal communication arrangements to monitor real time grid operability, potential shortcomings in grid reliability evaluations performed as part of maintenance risk assessments, lack of preestablished arrangements identifying local grid power sources and transmission paths, and potential elimination of grid events from operating experience are some conditions that could potentially impact compliance. The staff identified these issues as a result of considering the August 14, 2003 blackout event.

On August 14, 2003, the largest power outage in U.S. history occurred in the Northeastern United States and parts of Canada. Nine U.S. nuclear power plants (NPPs) tripped. Eight of these, along with one NPP that was already shut down, lost offsite power. The length of time until power was available to the switchyard ranged from approximately 1 hour to six and one-half hours. Although the onsite emergency diesel generators (EDGs) functioned to maintain safe shutdown conditions, this event was significant in terms of the number of plants affected and the duration of the power outage.

The loss of all alternating current (AC) power to the essential and nonessential switchgear buses at a NPP involves the simultaneous loss of offsite power (LOOP), turbine trip, and the loss of the onsite emergency power supplies (typically EDGs). Such an event is referred to as a station blackout (SBO). Risk analyses performed for NPPs indicate that the loss of all AC power can be a significant contributor to the core damage frequency. Although NPPs are designed to cope with a LOOP event through the use of onsite power supplies, LOOP events are considered precursors to SBO. An increase in the frequency or duration of LOOP events increases the probability of core damage.

The NRC issued a regulatory issue summary (RIS 2004-5, "Grid Operability and the Impact on Plant Risk and the Operability of Offsite

Power," dated April 15, 2004) to advise NPP addressees of the requirements in Section 50.65 of Title 10 of the Code of Federal Regulations (10 CFR 50.65), "Requirements for monitoring the effectiveness of maintenance at nuclear power plants"; 10 CFR 50.63, "Loss of all alternating current power"; 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 17, "Electric power systems"; and plant technical specifications on operability of offsite power. In addition, the NRC issued Temporary Instruction (TI) 2515/156, "Offsite Power System Operational Readiness," dated April 29, 2004, which instructed the regional offices to perform follow up inspections at plant sites on the issues identified in the RIS. The NRC needs additional information from its licensees in the four areas identified above in order to determine if regulatory compliance is being maintained.

Applicable Regulatory Requirements

GDC 17 and Plant Technical Specifications (TSs)

For NPPs licensed in accordance with the GDC in Appendix A to 10 CFR Part 50, the design criteria for onsite and offsite electrical power systems are provided in GDC 17. For NPPs not licensed in accordance with the GDC in Appendix A, the applicable design criteria are provided in the updated final safety analysis report. These reports set forth criteria similar to GDC 17, which requires, among other things, that an offsite electric power system be provided to permit the functioning of certain structures, systems, and components (SSCs) important to safety in the event of anticipated operational occurrences and postulated accidents.

The transmission network (grid) is the source of power to the offsite power system. The final paragraph of GDC 17 requires, in part, provisions to minimize the probability of the loss of power from the transmission network given a loss of power generated by the nuclear power unit. The loss of power generated by the nuclear power unit (trip) is an anticipated operational occurrence. It is therefore necessary that the offsite power circuits be designed to be available following a trip of the unit in order to permit the functioning of SSCs necessary to respond to the event.

The trip of an NPP, however, can affect the grid so as to result in a LOOP. Foremost among such effects is a reduction in the plant's switchyard voltage as a result of the loss of the reactive power supply to the grid from the NPP's generator. If the voltage is low enough, the plant's degraded voltage

protection could actuate and separate the plant safety buses from offsite power. A less likely event would be that the trip of a nuclear plant causes grid instability, potential grid collapse, and subsequent LOOP due to the loss of the real and/or reactive power support supplied to the grid from the plant's generator.

In general, plant TSs require the offsite power system to be operable as part of the limiting condition for operation and specify what actions to be taken when the offsite power system is not operable. Plant operators should therefore be aware of (1) the capability of the offsite power system to supply power, as specified by TS, during operation and (2) situations that can result in a LOOP following a trip of the plant. If the offsite power system is not capable of providing the requisite power in either situation, the system should be declared inoperable and pertinent plant TS provisions followed.

10 CFR 50.65

Section 50.65(a)(4) requires that licensees assess and manage the increase in risk that may result from proposed maintenance activities before performing the maintenance activities. These activities include, but are not limited to, surveillances, post-maintenance testing, and corrective and preventive maintenance. The scope of the assessment may be limited to structures, systems, and components (SSCs) that a risk-informed evaluation process has shown to be significant to public health and safety.

In NRC Regulatory Guide (RG) 1.182, the NRC endorsed the February 22, 2000, revision to Section 11 of NUMARC 93-01, Revision 2, as providing methods that are acceptable for meeting 10 CFR 50.65(a)(4). The revised Section 11 addressed grid stability and offsite power availability in several areas. Section 11.3.2.8 states:

Emergent conditions may result in the need for action prior to conduct of the assessment, or could change the conditions of a previously performed assessment. Examples include plant configuration or mode changes, additional SSCs out of service due to failures, or *significant changes in external conditions (weather, offsite power availability)* [emphasis added].

Additionally, Section 11.3.4 states, in part, that "the assessment for removal from service of a single SSC for the planned amount of time may be limited to the consideration of *unusual external conditions that are present or imminent (e.g., severe weather, offsite power instability)*" [emphasis added].

Accordingly, licensees should perform grid reliability evaluations as

part of the maintenance risk assessment required by 10 CFR 50.65 before taking a risk-significant piece of equipment (including but not limited to an EDG, a battery, a steam-driven pump, an alternate AC power source, etc.) out of service to do maintenance activities, including surveillances, post-maintenance testing, and corrective and preventive maintenance. The likelihood of LOOP and SBO should be considered in the maintenance risk assessment, whether quantitatively or qualitatively. If the grid reliability evaluation indicates that marginally adequate grid conditions may exist during maintenance activities, the licensee should consider rescheduling maintenance activities that tend to increase the LOOP frequency or reduce the capability to cope with a LOOP or SBO. If there is some overriding need to perform maintenance on risk-significant equipment under conditions of degraded grid stability, the licensee should consider alternate equipment protection measures and compensatory actions to reduce the risk. With regard to conditions that emerge during a maintenance activity in progress, Section 11.3.2.8 in NUMARC 93-01, Revision 2, states that emergent conditions could change the conditions of a previously performed risk assessment. Offsite power availability is one of the examples given of an emergent condition that could change the conditions of a previously performed risk assessment. Therefore, licensees should reassess the plant risk in view of an emergent condition, taking the worsening grid condition into account. However, this reassessment of the risk should not interfere with or delay measures to place and maintain the plant in a safe condition in response to or preparation for those worsening grid conditions. 10 CFR 50.63

Pursuant to 10 CFR 50.63, "Loss of all alternating current power," the NRC requires that each NPP licensed to operate be able to withstand an SBO for a specified duration and recover from the SBO. NRC Regulatory Guide (RG) 1.155 provides guidance for licensees to use in developing their approach for complying with 10 CFR 50.63. The RG has a series of tables that define a set of pertinent plant and plant site parameters that have been found to affect the likelihood of a plant experiencing an SBO event of a given duration. Using the tables allows a licensee to determine a plant's relative vulnerability to SBO events of a given duration and identify an acceptable minimum SBO coping duration for the plant. With regard to grid-related losses

of offsite power, Table 4 in RG 1.155 indicates that the following plant sites should be assigned to Offsite Power Design Characteristic Group P3:

Sites that expect to experience a total loss of offsite power caused by grid failures at a frequency equal to or greater than once in 20 site-years, unless the site has procedures to recover AC power from reliable alternative (nonemergency) ac power sources within approximately one-half hour following a grid failure.

The majority of U.S. NPPs fall into the 4-hour minimum coping capability category set forth in RG 1.155. Table 2 in RG 1.155, however, indicates that a typical plant with two redundant EDGs per nuclear unit should have at least an 8-hour minimum coping duration if it falls into the P3 group. Therefore, plants that have experienced a grid-related LOOP since they were evaluated in accordance with the SBO guidance in RG 1.155 may no longer be consistent with that guidance.

Section 2 of RG 1.155 provides guidance on the procedures necessary to restore offsite power, including losses following "grid undervoltage and collapse." Section 2 states: "Procedures should include the actions necessary to restore offsite power and use nearby power sources when offsite power is unavailable." These procedures are a necessary element in minimizing LOOP durations following a LOOP or SBO event.

Discussion

Use of Nuclear Power Plant/ Transmission System Operator Protocols and Real Time Contingency Analysis Programs To Monitor Grid Conditions To Determine Operability of Offsite Power Systems Under Plant Technical Specifications

As discussed above, a licensee's ability to comply with TS governing offsite power may depend on grid conditions and plant status, in particular, maintenance being performed on, and inoperability of, key elements of the plant switchyard and offsite power grid can affect the operability of the offsite power system, particularly during times of high grid load and high grid stress. A communication interface with the plant's transmission system operator (TSO), together with other local means used to maintain NPP operator awareness of changes in the plant switchyard and offsite power grid, is important to enable the licensee to determine the effects of these changes on operability of the offsite power system. The staff found a good deal of variability in the TI 2515/156 responses

on the use of these NPP/TSO communication protocols. Some licensees appear to be relying on informal NPP/TSO communication arrangements and long term grid studies without real time control of operation to within the limits of the studies to assure offsite power operability. However, the staff also learned that most TSOs serving NPP sites now have, or will shortly have, enhanced computer capability in the form of real time contingency analysis (RTCAs) programs.

The RTCAs give the TSO the capability to determine the impact of the loss or unavailability of various transmission system elements (called contingencies) on the condition of the transmission system. The transmission systems can generally cope with a number of contingencies without undue impairment of grid reliability, but it is important for the NPP operator to know when the transmission system near the NPP can no longer sustain NPP voltage based on the TSO's analysis of a reasonable level of contingencies. This knowledge can help the operator understand the general condition of the NPP offsite power system. In order to satisfy the maintenance rule, the NPP operator should know the grid's condition before taking a risk-significant piece of equipment out of service and monitor it for as long as the equipment remains out of service.

It is especially important for the NPP operator to know when the trip of the NPP will result in the loss of offsite power to the plant. As indicated in RIS 2004-05, a reduction in NPP switchyard voltage due to a trip is the main cause of a LOOP event. It is important to understand that the transmission systems can generally tolerate voltages lower than those required for NPP SSC operability. As a result, the TSO will not necessarily keep the transmission system voltage above the level needed for the NPP unless the TSO has been informed of the needed voltage level, and agreements have been formalized to maintain the voltage level. It was not always clear from the data collected in accordance with TI 2515/156 whether the TSO would notify the NPP of inadequate transmission system contingency voltages or inadequate voltages required for the NPP SSC operability.

Inadequate NPP contingency post-trip switchyard voltages will result in TS inoperability of the NPP offsite power system due to actuation of NPP degraded voltage protection circuits during certain events that result in an NPP trip. Occasionally NPPs of certain designs have experienced other inoperabilities under these

circumstances (e.g., overloaded EDGs or loss of certain safety features due to interaction with circuit breaker logic). Safety-related motors may also be started more than once under these circumstances, which could result in operation outside the motors' specifications and actuation of overload protection. Unavailability of plant controlled equipment such as voltage regulators, transformer auto tap changers, and generator automatic voltage regulation can contribute to the more frequent occurrence of inadequate NPP post-trip voltages.

The RTCA programs in use by the TSOs, together with properly implemented NPP/TSO communication protocols, can keep NPP operators better informed about conditions affecting the NPP offsite power system. However, the RTCA programs are not always available to the TSO. This was the case during the period leading up to the August 14, 2003, blackout; and events have demonstrated the data used in the programs sometimes do not represent actual conditions and capabilities. These shortcomings have been offset to some degree by notification of RTCA unavailability to NPP operators and their subsequent performance of operability determinations and by verification of the actual post-trip switchyard voltages following inadvertent NPP trips.

Use of Nuclear Power Plant/Transmission System Operator Protocols To Monitor Grid Conditions for Consideration in Maintenance Risk Assessments

As set forth above, grid reliability evaluations should be performed as part of the maintenance risk assessment required by 10 CFR 50.65 before taking a risk-significant piece of equipment (including but not limited to an EDG, a battery, a steam-driven pump, an alternate AC power source, etc.) out of service to do maintenance activities, including surveillances, post-maintenance testing, and corrective and preventive maintenance. Further, worsening grid conditions that emerge during a maintenance activity in progress could affect offsite power availability, thereby changing the conditions of a previously performed assessment. A licensee should therefore reassess the plant risk under such circumstances, taking the worsening grid condition into account. An internal NRC expert panel convened to obtain short-term grid-related risk insights found that it is important to have effective NPP configuration risk management, as required by the Maintenance Rule, during periods when

the grid is degraded. In particular, a potentially significant increase in NPP risk may occur if equipment required to prevent and mitigate station blackout is unavailable when the grid is degraded.

Recent NRC studies have found that, since 1997, LOOP events have occurred more frequently during the summer (May–October), than before 1997, the probability of a LOOP event due to a reactor trip has also increased during the summer months, and the durations of LOOP events have generally increased. The staff is concerned about extended maintenance activities scheduled for equipment required to prevent and mitigate station blackout during these months, especially in areas of the country that experience a high level of grid stress.

The staff found a good deal of variability in the data collected in accordance with TI 2515/156 regarding grid reliability evaluations performed before taking risk-significant equipment out of service. Some NPPs communicate routinely with their TSOs once per shift to determine grid conditions, while others rely solely upon the TSOs to inform them of deteriorating grid conditions and do not inquire about grid conditions prior to taking risk-significant equipment out of service. Some do not consider the NPP post-trip switchyard voltages in their evaluations, and some do not coordinate risk-significant equipment maintenance with their TSOs.

The NPP/TSO communication protocol is a useful tool to obtain the information necessary for the grid reliability evaluations performed as part of the maintenance risk assessment required by 10 CFR 50.65 before a risk-significant piece of equipment is removed from service. Such a protocol is also useful in conforming to the guidance in NUMARC 9301, Rev. 2 for reassessing plant risk in light of emergent conditions. As discussed under the previous topic, the RTCAs available to most TSOs give them the capability to determine the impact of various transmission system contingencies on the condition of the transmission system. It is important that the NPP operator know when the transmission system near the NPP cannot sustain a reasonable level of contingencies. The NPP operator should know the general condition of the NPP offsite power system before removing an SSC from service under the maintenance rule and for as long as the equipment remains out of service.

Offsite Power Restoration Procedures in Accordance With Section 2 of Regulatory Guide 1.155

LOOP events can also have numerous unpredictable initiators, such as natural events, potential adversaries, human error, or design problems. Pursuant to 10 CFR 50.63, "Loss of all alternating current power," the NRC requires that each NPP licensed to operate be able to withstand a station blackout (SBO) for a specified duration and recover from the SBO. NRC Regulatory Guide (RG) 1.155 provides NRC guidance for licensees to use in developing their approaches for complying with 10 CFR 50.63. Section 2 of RG 1.155 provides guidance on the procedures necessary to restore offsite power, including losses following "grid undervoltage and collapse." Section 2 states: "Procedures should include the actions necessary to restore offsite power and use nearby power sources when offsite power is unavailable."

Preestablished agreements with NPP TSOs that identify local power sources and transmission paths that could be made available to resupply NPPs following a LOOP event help to minimize the durations of LOOP events, especially unpredictable LOOP events. Discussions with NPP licensees indicate that some licensees do not have such agreements in place, but instead attempt restoration of their EDGs following a potential SBO. RIS 2004–05 states that NPPs should have procedures available consistent with the guidance in Section 2 of RG 1.155 for restoration of offsite power following a LOOP or SBO event.

Losses of Offsite Power Caused by Grid Failures at a Frequency of ≥ 20 Years in Accordance With Regulatory Guide 1.155

The data collected in accordance with TI2515/156 indicate that some nuclear power plants have experienced grid-related LOOP events since the nuclear power plants were initially analyzed in accordance with the criteria in RG 1.155. The staff is concerned that these nuclear power plants have not been reanalyzed to determine whether their SBO coping durations remain consistent with the guidance in RG 1.155 subsequent to these LOOP events. The staff is also concerned that some plants may be inappropriately eliminating some of these grid events from their operating experience data base.

In view of the above, power reactor licensees may depend on information obtained from their TSOs in order to make operability determinations for TS compliance; to perform risk assessments under the maintenance rule; and to assure compliance with the SBO rule.

Accordingly, the NRC staff is requesting information on such matters from addressees. The NRC staff has not, however, identified any corrective actions that might be warranted.

Requested Information

In accordance with 10 CFR 50.54(f), addressees are required to submit written responses to this generic letter within 60 days of its date.

In their responses, addressees are requested to answer the following questions and provide the information to the NRC with respect to each of their NPPs:

Use of Nuclear Power Plant/ transmission System Operator Protocols and Real Time Contingency Analysis Programs To Monitor Grid Conditions in Accordance With GDC 17 and To Determine Operability of Offsite Power Systems Under Plant Technical Specifications

1. General Design Criterion (GDC) 17, "Electric power systems," of Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, of the Code of Federal Regulations (CFR) requires, in part, that licensees minimize the probability of the loss of power from the transmission network given a loss of power generated by the nuclear power unit. In order to determine if you have taken the necessary steps to minimize the probability of loss of offsite power (LOOP) following a reactor trip in accordance with GDC 17, describe what formal agreements you have for your transmission system operator (TSO) to promptly notify you when conditions of the surrounding grid are such that degraded voltage (*i.e.*, below TS requirements) or LOOP could occur following a trip of the reactor unit. Would the low switchyard voltage initiate operation of plant degraded voltage protection?

Specifically, what is the time period required for the notification? Do you have procedures to periodically check with the TSO to determine the grid condition and ascertain any conditions that would require a notification? Describe the grid conditions that would trigger a notification.

If you do not have a formal agreement with your TSO, please describe why you believe you comply with the provisions of GDC 17 as stated above, or describe what actions you intend to take to establish the necessary formal agreement with your TSO.

2. GDC 17 requires, in part, that licensees minimize the probability of the loss of power from the transmission network given a loss of power generated

by the nuclear power unit. In order to determine if you have taken the necessary steps to minimize the probability of LOOP following a reactor trip in accordance with GDC 17, describe how you ensure that the offsite power system will remain operable following a trip of your NPP.

We are particularly interested in information regarding whether your NPP's TSO uses a real-time contingency analysis (RTCA) program to determine grid conditions that would make the NPP offsite power system inoperable in the event of various contingencies? The type of information we are interested in includes the following: Does your NPP's TSO use the RTCA program as the basis for notifying the NPP when such a condition is identified? Would the RTCA program utilized by your TSO identify the condition where a trip of the NPP results in switchyard voltages (immediately and/or long-term) below the minimum TS requirements and operation of plant degraded voltage protection? How frequently does the RTCA program update? Provide details of RTCA-identified contingency conditions that would trigger an NPP notification from the TSO. Is the NPP notified of periods when the RTCA program is unavailable to the TSO, and does the NPP conduct an offsite power system operability determination when such a notification is received? Subsequent to an unscheduled inadvertent trip of the NPP, are the resultant switchyard voltages verified by procedure to be bounded by the voltages predicted by the RTCA?

If a RTCA program is not available to the NPP's TSO, are there any plans for the TSO to obtain one? If so, on what schedule? If an RTCA program is not available, does your TSO perform periodic studies to verify that adequate offsite power capability, including adequate NPP post-trip switchyard voltages (immediate and/or long-term), will be available to the NPP over the projected time frame of the study? Are the key assumptions and parameters of these periodic studies translated into TSO guidance to ensure that the transmission system is operated within the bounds of the analyses? If the bounds of the analyses are exceeded, does this condition trigger the notification provisions discussed in question 1 above?

If your TSO does not use, or you do not have access to the results of a RTCA program, or that your TSO does not perform and make available to you periodic studies that determine the adequacy of offsite power capability; please describe why you believe you comply with the provisions of GDC 17

as stated above, or describe what actions you intend to take to ensure that the offsite power system will be sufficiently reliable and remain operable with high probability following a trip of your NPP.

3. GDC 17 requires, in part, that licensees minimize the probability of the loss of power from the transmission network given a loss of power generated by the nuclear power unit. NPP TS requirements also require that the plant's offsite power system be operable as part of the plant's limiting conditions of operation. In order to determine if you have taken the necessary steps to minimize the probability of LOOP following a reactor trip in accordance with GDC 17 and your plant TS, describe how you ensure that the NPP's offsite power system and safety-related components will remain operable when degraded switchyard voltages are present.

Specifically, when the TSO notifies the NPP operator a trip of the NPP would result in switchyard voltages (immediately and/or long term) below TS minimum requirements and would result in operation of plant degraded voltage protection, is the NPP offsite power system declared inoperable under the plant TSs? If not, why not? If onsite safety-related equipment (*e.g.*, emergency diesel generators or safety-related motors) are lost and incapable of performing their required safety functions as a result of responding to an emergency actuation signal during this condition, are they declared inoperable as well? If not, why not? Do you evaluate onsite safety-related equipment to determine whether it will operate as designed during this condition? When the NPP is notified by the TSO of other grid conditions that may impair the capability or availability of offsite power, are any plant TS action statements entered? If so, please identify them. If you believe your plant TS does not require you to declare your offsite power system or safety-related equipment inoperable in any of the aforementioned scenarios, describe why you believe you comply with the provisions of GDC 17 and your plant TS as stated above, or describe what actions you intend to take to ensure that the offsite power system and safety-related components will remain operable when degraded switchyard voltages are present.

4. GDC 17 requires, in part, that licensees minimize the probability of the loss of power from the transmission network given a loss of power generated by the nuclear power unit. NPP TS requirements also require that the plant's offsite power system be operable as part of the plant's limiting conditions

of operation. In order to determine if you have taken the necessary steps to minimize the probability of LOOP following a reactor trip in accordance with GDC 17 and your plant TS, describe how you ensure that the offsite power system will remain operable following a trip of your NPP.

Specifically, do the NPP operators have any guidance in plant TS Bases sections, the Final Safety Analysis Report, or plant procedures regarding situations where the condition of plant-controlled or -monitored equipment (e.g., voltage regulators, auto tap changing transformers, capacitors, static VAR compensators, main generator voltage regulators, etc.) can adversely affect the operability of the NPP offsite power system? If your TS Bases sections, the Final Safety Analysis Report, or plant procedures do not provide guidance regarding situations where the condition of plant-controlled or -monitored equipment can adversely affect the operability of the NPP offsite power system, describe why you believe you comply with the provisions of GDC 17 and the plant TS as stated above, or describe what actions you intend to take to ensure that guidance exists to address situations where the condition of plant-controlled or -monitored equipment can adversely affect the operability of the NPP offsite power system.

*Use of Nuclear Power Plant/
Transmission System Operator
Protocols To Monitor Grid Conditions
for Consideration in Maintenance Risk
Assessments Required by 10 CFR 50.65*

5. 10 CFR 50.65(a)(4) requires that licensees assess and manage the increase in risk that may result from proposed maintenance activities before performing the maintenance activities. As set forth above, grid reliability evaluations should be performed as part of the maintenance risk assessment required by 10 CFR 50.65 before taking a risk-significant piece of equipment (including but not limited to an EDG, a battery, a steam-driven pump, an alternate AC power source, etc.) out of service to do maintenance activities, including surveillances, post-maintenance testing, and corrective and preventive maintenance. In order to determine if you have taken the necessary steps to assess and manage the increase in risk that may result from proposed maintenance activities before performing the maintenance activities, please describe how you perform the grid reliability evaluations as part of the maintenance risk assessment required by 10 CFR 50.65.

Specifically, is a grid reliability evaluation performed at your NPP as

part of the maintenance risk assessment required by 10 CFR 50.65, before taking a risk-significant piece of equipment (including an EDG, a battery, a steam-driven pump, an alternate AC power source, etc.) out of service to do maintenance activities, including surveillances, post-maintenance testing, and corrective and preventive maintenance? Are seasonal variations in the probability of a LOOP at your plant site considered in the evaluation? Is the summer (May–October) a period of peak stress on the grid surrounding your NPP site? Do you contact the TSO to determine current and anticipated grid conditions as part of the grid reliability evaluation performed prior to taking risk-significant equipment out of service? Do you use a formal agreement or use formal procedures with your TSO, or do you contact the TSO periodically over the course of the out-of-service condition to check for a worsening grid condition that could emerge during a maintenance activity in progress? Is the TSO expected to notify the NPP of such a condition?

If a grid reliability evaluation that includes consideration of seasonal variations in LOOP probability is not performed as part of the maintenance risk assessment required by 10 CFR 50.65, and a formal agreement with the TSO or formal procedures to aid in the communication between the NPP and TSO are nonexistent (i.e., not part of the maintenance risk assessment required by 10 CFR 50.65), describe why you believe you comply with the provisions of 10 CFR 50.65(a)(4) as stated above; or describe what actions you intend to take to ensure that the increase in risk that may result from proposed maintenance activities is assessed and managed in accordance with 10 CFR 50.65(a)(4).

6. 10 CFR 50.65(a)(4) requires that licensees assess and manage the increase in risk that may result from proposed maintenance activities before performing the maintenance activities. As set forth above, grid reliability evaluations should be performed as part of the maintenance risk assessment required by 10 CFR 50.65 before taking a risk-significant piece of equipment out of service to do maintenance activities, including surveillances, post-maintenance testing, and corrective and preventive maintenance. In order to determine if you have taken the necessary steps to assess and manage the increase in risk that may result from proposed maintenance activities before performing the maintenance activities, please describe how you perform the grid reliability evaluations as part of the maintenance risk assessment required by 10 CFR 50.65.

Specifically, does the TSO coordinate transmission system maintenance activities that can have an impact on the NPP operation with the NPP operator? Does the NPP operator coordinate NPP maintenance activities that can have an impact on the transmission system with the TSO? How are these matters accomplished?

If there is no coordination between the NPP operator and the TSO regarding transmission system maintenance or NPP maintenance activities, describe why you believe you comply with the provisions of 10 CFR 50.65(a)(4) as stated above, or describe what actions you intend to take to ensure that the increase in risk that may result from proposed maintenance activities is assessed and managed in accordance with 10 CFR 50.65(a)(4).

*Offsite Power Restoration Procedures in
Accordance With 10 CFR 50.63 as
Developed in Section 2 of Regulatory
Guide 1.155*

7. Pursuant to 10 CFR 50.63, the NRC requires that each NPP licensed to operate be able to withstand a SBO for a specified duration and recover from the SBO. NRC Regulatory Guide (RG) 1.155 provides guidance for licensees to use in developing their approach for complying with 10 CFR 50.63. In order to determine if your current practices are consistent with the SBO requirements of 10 CFR 50.63 as developed in RG 1.155 please address the following:

Consistent with the recommendations in Section 2 of RG 1.155, it is expected that you have established an agreement with your plant's TSO that identify local power sources and transmission paths that could be made available to resupply your plant following a LOOP event. Briefly describe any agreement made with the TSO.

If you have not established an agreement with your plant's TSO that identifies local power sources and transmission paths that could be made available to resupply your plant following a LOOP event, describe why you believe you comply with the provisions of 10 CFR 50.63 as developed in RG 1.155, or describe what actions you intend to take to establish such an agreement with your plant's TSO.

*Losses of Offsite Power Caused by Grid
Failures at a Frequency of ≥ 20 Years in
Accordance With 10 CFR 50.63 as
Developed in Table 4 of Regulatory
Guide 1.155*

8. Pursuant to 10 CFR 50.63, the NRC requires that each NPP licensed to operate be able to withstand a SBO for a specified duration and recover from

the SBO. NRC Regulatory Guide (RG) 1.155 provides guidance for licensees to use in developing their approach for complying with 10 CFR 50.63. In order to determine if your current practices are consistent with the SBO requirements of 10 CFR 50.63, describe how your NPP maintains its SBO coping capabilities in accordance with 10 CFR 50.63.

Specifically, has your NPP site experienced a grid-related total loss of offsite power since its coping duration under 10 CFR 50.63 was initially determined? If so, has the NPP been reevaluated using the guidance in Table 4 of RG 1.155 to determine if it should be assigned to the P3 offsite power design characteristic group? What were the results of this reevaluation, and was the initially determined coping duration for the NPP adjusted?

If your NPP site experienced a grid-related total LOOP since the coping duration under 10 CFR 50.63 was initially determined and has not been reevaluated using the guidance in Table 4 of RG 1.155, describe why you believe you comply with the provisions of 10 CFR 50.63 as stated above, or describe what actions you intend to take to ensure that the NPP maintains its SBO coping capabilities in accordance with 10 CFR 50.63.

Actions To Ensure Compliance

9. If you determine that any action is warranted to bring your NPP into compliance with NRC regulatory requirements, including TS, GDC 17, 10 CFR 50.65(a)(4), or 10 CFR 50.53, describe the schedule for implementing it.

The required written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, 11555 Rockville Pike, Rockville, Maryland 20852, under oath or affirmation under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, a copy of the response should be sent to the appropriate regional administrator.

Addressees may request extension of the time in which a response to this generic letter is required in writing within 30 days of the date of this generic letter. The NRC will not grant such an extension except for good cause shown.

An addressee should consult SECY-04-0191, "Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors From Public Disclosure," dated October 19, 2004, to determine if its response contains sensitive unclassified (nonsafeguards) information and should be withheld

from public disclosure. SECY-04-0191 is available on the NRC public Web site.

Reasons for Information Request

This generic letter requests addressees to submit information. The requested information will enable the NRC staff to determine whether applicable requirements (plant TSs in conjunction with 10 CFR Part 50, Appendix A, General Design Criteria 17; 10 CFR 50.65(a)(4); and 10 CFR 50.63) are being met in regard to the grid topics addressed.

Related Generic Communications

NRC Regulatory Issue Summary 2004-05, "Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power," dated April 15, 2004 (ADAMS Accession No. ML040990550).

Backfit Discussion

Under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), this generic letter transmits an information request for the purpose of verifying compliance with applicable existing requirements. Specifically, the requested information will enable the NRC staff to determine whether applicable requirements (plant TSs in conjunction with 10 CFR Part 50, Appendix A, General Design Criteria 17; 10 CFR 50.65(a)(4); and 10 CFR 50.63) are being met in regard to the grid topics addressed. No backfit is either intended or approved in the context of issuance of this generic letter. Therefore, the staff has not performed a backfit analysis.

Federal Register Notification

A notice of opportunity for public comment on this generic letter was published in the **Federal Register** (xx FR xxxxx) on {date}. [Comments were received from {indicate the number of commentors by type}. The staff considered all comments that were received. The staff's evaluation of the comments is publicly available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML05xxxxxx.]

Small Business Regulatory Enforcement Fairness Act

The NRC has determined that this action is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

Paperwork Reduction Act Statement

This generic letter contains information collection requirements that are subject to the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150-0011, which expires on February 28, 2007.

The burden to the public for these mandatory information collections is estimated to average 60 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or 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.

Contact

Please direct any questions about this matter to the technical contact(s) or the Lead Project Manager listed below, or to the appropriate Office of Nuclear Reactor Regulation (NRR) project manager.

Bruce A. Boger, Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

Technical Contact: James Lazevnick, NRR, 301-415-2782.

Lead Project Manager: John Lamb, NRR, 301-415-1446.

End of Draft Generic Letter

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room

(PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

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

For the Nuclear Regulatory Commission.

Patrick H. Hiland,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-1674 Filed 4-11-05; 8:45 am]

BILLING CODE 7590-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s): (1) *Collection title:* Supplemental Information on Accident and Insurance.

(2) *Form(s) submitted:* SI-1c, SI-5, ID-3s, ID-3s-1, ID-3u, ID-30-k, ID-30k-1.

(3) *OMB Number:* 3220-0036.

(4) *Expiration date of current OMB clearance:* 05/31/2005.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 10,000.

(8) *Total annual responses:* 28,500.

(9) *Total annual reporting hours:* 1,691.

(10) *Collection description:* The Railroad Unemployment Insurance Act provides for the recovery of sickness benefits paid if an employee receives a settlement for the same injury for which benefits were paid. The collection obtains information about the person or company responsible for such payments that is needed to determine the amount of the RRB's entitlement.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or Ronald.Hodapp@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget,

Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.

[FR Doc. 05-7276 Filed 4-11-05; 8:45 am]

BILLING CODE 7905-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s): (1) *Collection title:* Railroad Separation Allowance or Severance Pay Report.

(2) *Form(s) submitted:* BA-9.

(3) *OMB Number:* 3220-0173.

(4) *Expiration date of current OMB clearance:* 05/31/2005.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 20.

(8) *Total annual responses:* 2,030.

(9) *Total annual reporting hours:* 2,537.

(10) *Collection description:* Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The collection obtains information concerning the separation allowances and severance payments paid from railroad employers.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or Ronald.Hodapp@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget,

Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.

[FR Doc. 05-7277 Filed 4-11-05; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 103; SEC File No. 270-410; OMB Control No. 3235-0466.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 103 permits passive market making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making. The Commission estimates that 171 respondents collection information under Rule 103 and that approximately 171 hours in the aggregate are required annually for these collections.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Officer of Information Technology, Securities and

Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05-7301 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form 6-K, OMB Control No. 3235-0116, SEC File No. 270-107.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 6-K elicits material information from foreign private issuers of publicly traded securities promptly after the occurrence of specified or other important corporate events so that investors have current information upon which to base investment decisions. The purpose of Form 6-K is to ensure that U.S. investors have access to the same information that foreign investors do when making investment decisions. Form 6-K is filed by approximately 14,661 issuers annually. We estimate that it takes 8 hours per response to prepare Form 6-K for a total annual burden of 117,288 hours. We further estimate that 367 Forms 6-K each year require an additional 27 hours per response to translate into English an additional 8 pages of foreign language text for a total of 9,909 additional burden hours, which results in 127,197 total annual burden hours for Form 6-K. We estimate that respondents incur 75% of the 117,288 annual burden hours (87,966 hours) to prepare Form 6-K and 25% of the 9,909 burden hours (2,477 hours) to translate the additional foreign language text into English for a total annual reporting burden of 90,443 hours. The remaining burden hours are reflected as a cost to the foreign private issuers.

Written comments are invited on: (a) Whether this 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 collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1665 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 7d-2 [17 CFR 270.7d-2], SEC File No. 270-464; OMB Control No. 3235-0527.

Rule 237; SEC File No. 270-465; OMB Control No. 3235-0528.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"). In cases where these individuals move to the United States, these participants ("Canadian/U.S. Participants" or "participants") may not be able to manage their Canadian

retirement account investments. Most securities and most investment companies ("funds") that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirements of the Securities Act of 1933 ("Securities Act")¹ and, in the case of securities of an unregistered fund, the Investment Company Act of 1940 ("Investment Company Act").² As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants, in the past, had not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

In 2000, the Commission issued two rules that enabled Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian/U.S. Participants and sales to their accounts.³ Rule 237 under the Securities Act permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act. Rule 7d-2 under the Investment Company Act permits foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act.

The provisions of rules 237 and 7d-2 are substantially identical. Rule 237 requires written offering materials for securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission and may not be offered or sold in the United States unless they are registered or exempt from registration under the U.S. securities laws. Rule 7d-2 requires written offering materials for securities offered or sold in reliance on that rule to make the same disclosure concerning those securities, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. Neither rule 237 nor rule 7d-2 requires any documents to be filed

¹ 15 U.S.C. 77.

² 15 U.S.C. 80a.

³ See Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33-7860, 34-42905, IC-24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)].

with the Commission. The burden under either rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement. The staff estimates the annual burden as a result of the disclosure requirements of rules 7d-2 and 237 as follows.

a. Rule 7d-2

The staff estimated that there are approximately 1,300 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act. The staff estimates that approximately 65 (5 percent) additional Canadian funds may rely on the rule each year to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts, and that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 195 offering documents. The staff therefore estimates that approximately 65 respondents would make 195 responses by adding the new disclosure statement to approximately 195 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d-2 disclosure requirement would be approximately 32.5 hours (195 offering documents \times 10 minutes per document). The total annual cost of these burden hours is estimated to be \$2,155.08 (32.5 hours \times \$66.31 per hour of professional time).⁴

b. Rule 237

Canadian issuers other than funds. The Commission understands that there are approximately 3,500 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian/

U.S. Participants.⁵ The staff estimates that in any given year approximately 35 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 35 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 105 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 35 respondents⁶ would be required to make 105 responses by adding the new disclosure statements to approximately 105 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 17.5 hours (105 offering documents \times 10 minutes per document). The total annual cost of burden hours is estimated to be \$1,160.43 (17.5 hours \times \$66.31 hour of professional time).⁷

Other foreign issuers other than funds. In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. Because Canadian law strictly limits the amount of foreign investments that may be held in a Canadian retirement account, however, the staff believes that the number of issuers from other countries that relies on rule 237, and that therefore is required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a

⁴ Canadian funds can rely on both rule 7d-2 and rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts without violating the registration requirements of the Investment Company Act or the Securities Act. Rule 237, however, does not require any disclosure in addition to that required by rule 7d-2. Thus, the disclosure requirements of rule 237 do not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d-2. To avoid double-counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with rule 237.

⁶ This estimate of respondents also assumes that all respondents are foreign issuers. The number of respondents may be greater if foreign underwriters or broker-dealers draft a sticker or supplement to add the required disclosure to an existing offering document.

⁷ See supra note 4.

representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1666 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a-2, SEC File No. 270-189, OMB Control No. 3235-0201.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-2 requires underwriters to maintain information regarding stabilizing activities, syndicate covering transactions, and penalty bids. The Commission estimates that 519 respondents collect information under Rule 17a-2 and that approximately 2,595 hours in the aggregate are required annually for these collections.

⁴ The Commission's estimate concerning the wage rate for professional time is based on salary information for the securities industry compiled by the Securities Industry Association. See Securities Industry Association, Report on Management and Professional Earnings in the Securities Industry 2003 (September 2003).

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1668 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a-13; SEC File No. 270-27; OMB Control No. 3235-0035.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval. The Code of Federal Regulations citation to this collection of information is the following rule: 17 CFR 240.17a-13 Quarterly Security Counts to be Made by Certain Exchange Members, Brokers, and Dealers.

Rule 17a-13(b) generally requires that at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held and account for all other securities not in their possession, but

subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a-13(c) provides that under specified conditions, the securities counts, examination and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a-13 does not require filing a report with the Commission, security count discrepancies must be reported on Form X-17a-5 as required by Rule 17a-5. Rule 17a-13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities.

The information obtained from Rule 17a-13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations ("SROs") to those firms having problems in their back offices.

Currently, there are approximately 5,907 respondents that must comply with Rule 17a-13. However, given the variability in their businesses, it is difficult to quantify how many hours per year each respondent spends on the rule. As noted, the rule requires a respondent to account for all securities in its possession. Many respondents hold few, if any, securities; while others hold large quantities. Therefore, the time burden of complying with the rule will depend on respondent-specific factors, including size, number of customers, and proprietary trading activity. The staff estimates that the average time spent per respondent on the rule is 100 hours per year. This estimate takes into account the fact that more than half the 5,907 respondents—according to financial reports filed with the SEC—may spend little or no time in complying with the rule, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total compliance burden per year is 590,700 hours (5,907

respondents × 100 hours/respondent). It should be noted that most broker-dealers would engage in the activities required by Rule 17a-13 even if they were not required to do so.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 30, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1669 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ac3-1(a), SEC File No. 270-96, OMB Control No. 3235-0151; Form TA-W(1669), SEC File No. 270-96, OMB Control No. 3235-0151.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Subsection (c)(4)(B) of Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") authorizes transfer agents registered with an appropriate regulatory agency ("ARA") to withdraw

from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(4)(B) of the Exchange Act the Commission, on September 1, 1977, promulgated Rule 17Ac3-1(a) and accompanying Form TA-W. Rule 17Ac3-1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA-W. Form TA-W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA-W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Exchange Act. Without Rule 17Ac3-1(a) and Form TA-W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately 50 TA-Ws with the Commission annually. A Form TA-W filing occurs only once, when a transfer agent is seeking deregistration. Since the form is simple and straightforward, the Commission estimates that a transfer agent need spend no more than 30 minutes to complete a Form TA-W. Therefore, the total average annual burden to covered entities is approximately 25 hours of preparation and maintenance time.

In view of the ready availability of the information requested by TA-W, its short and simple presentation, and the Commission's experience with the form, we estimate that approximately 30 minutes is required to complete Form TA-W, including clerical time. The Commission estimates a cost of approximately \$35 for each 30 minutes. Therefore, the total average annual cost burden is approximately \$1,750.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1671 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f-2(e); SEC File No. 270-37; OMB Control No. 3235-0031.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f-2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f-2 to prepare and maintain a statement supporting their claim exemption.

Notices prepared pursuant to Rule 17f-2(e) must be maintained for as long as the covered entity claims an exemption from the fingerprinting requirements of Rule 17f-2. The

recordkeeping requirement under Rule 17f-2(e) is mandatory to assist the Commission and other regulatory agencies with ensuring compliance with Rule 17f-2. This rule does not involve the collection of confidential information.

It is estimated that approximately 75 respondents will incur an average burden of 30 minutes per year to comply with this rule, for a total approximate burden of 38 hours.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1672 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15g-2; SEC File No. 270-381; OMB Control No. 3235-0434.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The "Penny Stock Disclosure Rules" (Rule 15g-2, 17 CFR 240.15g-2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a "penny stock". As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in "penny stocks" before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission. The Commission estimates that there are approximately 270 broker-dealers subject to Rule 15g-2, and that each one of these firms will process an average of three new customers for "penny stocks" per week. Thus each respondent will process approximately 156 risk disclosure documents per year. The staff calculates that (a) the copying and mailing of the risk disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign, and return the risk disclosure document. Thus, the total ongoing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 270 respondents, the annual burden is 421,200 minutes (1,560 minutes per each of the 270 respondents), or 7,020 hours. In addition, broker-dealers will incur a recordkeeping burden of approximately two minutes per response. Thus each respondent will incur a recordkeeping burden of 312 (156 × 2) minutes per year, and respondents as a group will incur an aggregate annual recordkeeping burden of 1,404 hours (270 × 312/60). Accordingly, the aggregate annual hour burden associated with Rule 15g-2 is 8,424 hours (7,020 + 1,404).

Written 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 collection of

information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret F. McFarland,

Deputy Secretary.

[FR Doc. E5-1673 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 102; SEC File No. 270-409; OMB Control No. 3235-0467.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 102 prohibits distribution participants, issuers, and selling security holders from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance a written policy regarding general compliance with Regulation M for *de minimus* transactions. The Commission estimates that 669 respondents collect information under Rule 102 and that approximately 1,569 hours in the aggregate are required annually for these collections.

Written 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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 31, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-1695 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Bio-Heal Laboratories, Inc.; Order of Suspension of Trading

April 8, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Bio-Heal Laboratories, Inc. ("Bio-Heal"). The Commission is concerned that Bio-Heal may have unlawfully issued approximately 12 million shares of common stock in purported reliance on Rule 504 of Regulation D of the Securities Act of 1933. Bio-Heal, a company that is delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 ("Exchange Act"), is quoted on the Pink Sheets under the ticker symbol BHLL.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Exchange Act, that trading in the above-listed company is suspended for the period from 9:30 a.m.

e.d.t. April 8, 2005 through 11:59 p.m.
e.d.t., on April 21, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05-7414 Filed 4-8-05; 1:51 pm]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-51477; File No. SR-NYSE-2005-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Annual Membership Fees Payable by Electronic Access Members of the Exchange

April 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 March 10, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed rule change as described in Items I, II and III below, which items have been prepared

by the NYSE. The proposed rule change has been filed by the NYSE as a proposal establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act³ 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 NYSE proposes to revise its policy and price list with respect to the annual membership fees payable by electronic access members (“EAMs”).

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

EAM ANNUAL FEE POLICY

[Membership fees]

Electronic access		
1989 Current price	1990 Existing formula price	1990 Proposed price
\$77,000(*)	\$70,736 Calculated once per year (November) for the ensuing year; based on 70 percent of prior 12-month average (December through November including initiation fee and dues) of Physical Access Membership fees.	\$63,642 (January–March 1990) Calculated quarterly; based on 70 percent of 6-months average of Physical Access Membership fees, excluding initiation fee and dues. (First quarter 1990 fee based on April–September 1989 Physical Access fees.)

* 1988 fee, held constant for 1989.

The membership fee payable by an electronic access member, with respect to each year of such membership, exclusive of fines and of such other charges as may be imposed pursuant to the Constitution, shall be the sum of (i) 90 of the 6 month average of the annual rentals payable under the bona fide leases of membership entered into during each of the six calendar months prior to the most recently completed quarter,⁵ (ii) \$1,500, and (iii) with respect to the first year of such membership only, \$5,000; provided, however, that if at any time the membership fee payable pursuant to Section 1(a) of Art. X of the Constitution is in excess of, or less than, \$1,500 per year, the amount provided in clause (ii) above shall be correspondingly increased or reduced, and if the amount of the fee charged to a new member as established by the Board pursuant to

Section 4 of Art. II of the Constitution is in excess of, or less than, \$5,000, the amount provided in clause (iii) above shall be correspondingly increased or reduced. Such membership fee shall be paid in full prior to admission to membership, and prior to any renewal of such member’s membership.

Notwithstanding the foregoing, in accordance with Art. X, Section 1(c) of the Constitution, the membership fee payable by an electronic access member with respect to each year of such membership shall in no event be less than \$13,500.

The Board has approved, for calendar 2005, the effective elimination of the initiation fee, in a manner to be administered consistently by the Exchange, in the event an electronic access member otherwise becomes an Exchange member.

* * * * *

2005 Price List

* * * * *

Regular Members

Dues—\$1,500.00.

Transfer fees for purchased and leased seat—5 percent of purchase price or last contracted sale (Minimum \$1,000.00 Maximum \$5,000).

Other

Physical access—calculated monthly—Function of bona fide lease prices.

Electronic access—calculated quarterly—[70 percent of prior 6 month PAM price] *The sum of (i) 90 percent of the 6 month average of the annual rentals payable under the bona fide leases of membership entered into during each of the six calendar months prior to the most recently completed*

the average lease of the six calendar months prior to the most recently completed quarter, so that the January average lease is based on the average lease during April-September of the prior year.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ For example, the calculation of the EAM fee charged in the month of November is based on average lease prices during January-June. The average lease for each of these months is based on

quarter,¹ (ii) \$1,500,² and (iii) with respect to the first year of such membership only, \$5,000.³

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Art. X, Section 1(c) of the Exchange's Constitution, the Board of Directors has authority to determine the membership fee payable by an EAM, subject to a requirement that the fee not be less than \$13,500 annually. Currently, the annual membership fee payable by EAMs is 70 percent of the average price charged to physical access members ("PAMs") during the two quarters prior to the most recently completed quarter. The PAM price for each month is calculated as the six-month average lease price for each of the prior six months. However, there are currently no PAMs, as the sole remaining PAM was converted to a lease in November 2004. As such, it is appropriate to adjust the formula for calculating EAM annual membership fees to remove references to PAM prices. In addition, the Exchange has determined that the difference between

¹ For example, the calculation of the EAM fee charged in the month of November is based on average lease prices during January–June. The average lease for each of these months is based on the average lease of the six calendar months prior to the most recently completed quarter, so that the January average lease is based on the average lease during April–September of the prior year.

² If at any time the dues payable by regular members are in excess of, or less than, \$1,500 per year, this amount shall be correspondingly increased or reduced.

³ If at any time the maximum transfer fees for a purchased or leased seat payable by a new regular member are in excess of, or less than, \$5,000, this amount shall be correspondingly increased or reduced. The Board has approved, for calendar 2005, the effective elimination of this initiation fee, in a manner to be administered consistently by the Exchange, in the event an electronic access member otherwise becomes an Exchange member.

the cost of leasing and the price of an EAM should be narrowed. Accordingly, the proposed new EAM annual fee policy would increase the annual fee from 70 percent to 90 percent of what the PAM fee would have been, subject to the requirement that the fee not be less than \$13,500 annually. In addition, the revised EAM fees will include the standard initiation fee (currently \$5,000)⁵ in the first year of membership and the standard annual membership dues (currently \$1,500).⁶ The initiation fee and the annual dues were originally charged to EAMs, although they had been removed when EAM fees were lowered in 1989.⁷ The Exchange's Board has approved, for calendar 2005, the effective elimination of the initiation fee, in a manner to be administered consistently by the Exchange, in the event an EAM otherwise becomes an Exchange member. As is currently the case, EAM fees under the proposed revised policy will be calculated and fixed on a quarterly basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ in particular, in that the proposal is designed so that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

⁵ Transfer fees for purchased and leased seats equal 5% of the purchase price or last contracted sale of a seat, subject to minimum and maximum fees of \$1,000 and \$5,000 respectively. As seat prices currently exceed \$1,000,000, the current initiation fee is the \$5,000 maximum. See www.nyse.com/pdfs/2005pricelist_a.pdf.

⁶ See http://www.nyse.com/pdfs/2005pricelist_a.pdf.

⁷ See Securities Exchange Act Release No. 27552 (December 19, 1989), 54 FR 53226 (December 27, 1989).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder¹¹ because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 purpose 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-NYSE-2005-11 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-NYSE-2005-11. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2005-11 and should be submitted on or before May 3, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-1696 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51476; File No. SR-Phlx-2004-75]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Floor Official Conflicts of Interest

April 5, 2005.

On November 9, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 124, Disputes; and Option Floor Procedure Advices-27, Floor Official Rulings—Options ("OFPA F-27"), to authorize Exchange staff³ to disqualify a Floor Official from participating in a particular ruling where it appears that such Floor Official has a conflict of interest. The proposed rule change was published for comment in the **Federal Register** on March 4, 2005.⁴ The Commission received no comments on the proposal.

The proposed rule defines a "conflict of interest" to exist where a Floor Official is directly or indirectly

affiliated with a party seeking a Floor Official ruling; is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; is a debtor or creditor of a party seeking a Floor Official ruling; or is an immediate family member of a party seeking a Floor Official ruling. The proposal does not propose to limit the term "conflict of interest" to these four circumstances and Exchange staff are authorized to consider other circumstances, on a case-by-case basis, in determining the eligibility of a particular Floor Official to participate in a particular ruling.

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 exchange⁵ and, in particular, the requirements of Section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, by providing expressly in the Exchange's rules that Exchange staff are authorized to disqualify a Floor Official from participating in a particular ruling where it appears that such Floor Official has a conflict of interest. In the Commission's view, the proposed rule change would further the goal of fair and objective decision making by Floor Officials, because the Exchange would be able to take the steps necessary to prevent a Floor Official from participating in a particular ruling where it appears that the Floor Official has a conflict of interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2004-75), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-1697 Filed 4-11-05; 8:45 am]

BILLING CODE 8010-01-P

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5043]

60-Day Notice of Proposed Information Collections

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Statement of Registration
- *OMB Control Number:* 1405-0002
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DS-2032
- *Respondents:* Business and non-profit organizations
- *Estimated Number of Respondents:* 5,000 (total)
- *Estimated Number of Responses:* 3,500 (per year)
- *Average Hours Per Response:* 2 hours
- *Total Estimated Burden:* 7,000 hours (per year)
- *Frequency:* Every one or two years
- *Obligation to Respond:* Mandatory
- *Title of Information Collection:* Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data
- *OMB Control Number:* 1405-0003
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP-5
- *Respondents:* Business and non-profit organizations
- *Estimated Number of Respondents:* 5,000 (total)
- *Estimated Number of Responses:* 35,000 (per year)
- *Average Hours Per Response:* 1 hour
- *Total Estimated Burden:* 35,000 hours (per year)
- *Frequency:* On occasion
- *Obligation to Respond:* Required to Obtain Benefits
- *Title of Information Collection:* Application/License for Temporary Import of Unclassified Defense Articles
- *OMB Control Number:* 1405-0013

- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* DSP-61
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 200 (total)
 - *Estimated Number of Responses:* 1,200 (per year)
 - *Average Hours Per Response:* ½ hour (30 minutes)
 - *Total Estimated Burden:* 600 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
- *Title of Information Collection:* Application/License for Temporary Export of Unclassified Defense Articles
 - *OMB Control Number:* 1405-0023
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* DSP-73
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 400 (total)
 - *Estimated Number of Responses:* 2,700 (per year)
 - *Average Hours Per Response:* 1 hour
 - *Total Estimated Burden:* 2,700 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
 - *Title of Information Collection:* Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data
 - *OMB Control Number:* 1405-0022
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* DSP-85
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 100 (total)
 - *Estimated Number of Responses:* 260 (per year)
 - *Average Hours Per Response:* ½ hour (30 minutes)
 - *Total Estimated Burden:* 130 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
 - *Title of Information Collection:* Non-Transfer and Use Certificate
 - *OMB Control Number:* 1405-0021
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* DSP-83
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 5,000 (total)
 - *Estimated Number of Responses:* 9,000 (per year)
 - *Average Hours Per Response:* 1 hour
 - *Total Estimated Burden:* 9,000 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
 - *Title of Information Collection:* Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services
 - *OMB Control Number:* 1405-0025
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* None
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 5,000 (total)
 - *Estimated Number of Responses:* 7,250 (per year)
 - *Average Hours Per Response:* 1 hour
 - *Total Estimated Burden:* 7,250 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Mandatory
 - *Title of Information Collection:* Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data
 - *OMB Control Number:* 1405-0092
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* DSP-119
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 5,000 (total)
 - *Estimated Number of Responses:* 9,000 (per year)
 - *Average Hours Per Response:* 1 hour
 - *Total Estimated Burden:* 4,500 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
 - *Title of Information Collection:* Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program
 - *OMB Control Number:* 1405-0051
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* DSP-94
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 250 (total)
 - *Estimated Number of Responses:* 2,500 (per year)
 - *Average Hours Per Response:* ½ hour (30 minutes)
 - *Total Estimated Burden:* 1,250 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
 - *Title of Information Collection:* Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements
 - *OMB Control Number:* 1405-0093
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* None
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 5,000 (total)
 - *Estimated Number of Responses:* 6,700 (per year)
 - *Average Hours Per Response:* 2 hours
 - *Total Estimated Burden:* 13,400 hours (per year)
 - *Frequency:* On occasion
 - *Obligation to Respond:* Required to Obtain Benefits
 - *Title of Information Collection:* Maintenance of Records by Registrants
 - *OMB Control Number:* 1405-0111
 - *Type of Request:* Extension of Currently Approved Collection
 - *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
 - *Form Number:* None
 - *Respondents:* Business and non-profit organizations
 - *Estimated Number of Respondents:* 5,000 (total)
 - *Estimated Number of Responses:* 5,000 (per year)
 - *Average Hours Per Response:* 20 hours
 - *Total Estimated Burden:* 100,000 hours (per year)

- *Frequency*: On occasion
- *Obligation to Respond*: Mandatory
- *Title of Information Collection*: Prior Approval for Brokering Activity
- *OMB Control Number*: 1405-0142
- *Type of Request*: Extension of Currently Approved Collection
- *Originating Office*: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number*: None
- *Respondents*: Business and non-profit organizations
- *Estimated Number of Respondents*: 14 (total)
- *Estimated Number of Responses*: 25 (per year)
- *Average Hours Per Response*: 2 hours
- *Total Estimated Burden*: 50 hours (per year)
- *Frequency*: On occasion
- *Obligation to Respond*: Required to Obtain Benefits
- *Title of Information Collection*: Brokering Activity Reports
- *OMB Control Number*: 1405-0141
- *Type of Request*: Extension of Currently Approved Collection
- *Originating Office*: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number*: None
- *Respondents*: Business and non-profit organizations
- *Estimated Number of Respondents*: 280 (total)
- *Estimated Number of Responses*: 280 (per year)
- *Average Hours Per Response*: 2 hours
- *Total Estimated Burden*: 560 hours (per year)
- *Frequency*: On occasion
- *Obligation to Respond*: Mandatory

DATES: The Department will accept comments from the public up to 60 days from June 13, 2005.

ADDRESSES: Comments and questions should be directed to Angelo Chang, the Acting Director of the Office of Defense Trade Controls Management, Department of State, who may be reached via the following methods:

- *E-mail*: ChangAA@state.gov.
- *Mail*: Angelo Chang, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, SA-1, Room H1200, 2401 E Street, NW., Washington, DC 20037.
- *Fax*: (202) 261-8199.

You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional

information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Angelo Chang, Acting Director, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, SA-1, Room H1200, 2401 E Street, NW., Washington, DC 20037, who may be reached via e-mail at ChangAA@state.gov.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120-130). The public must submit an application or written request of the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, there is an annual reporting requirement from the defense industry regarding all brokering activity that was transacted. Furthermore, there is a requirement for the public to maintain such records for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: mail, personal delivery, fax, and/or electronically.

Dated: March 29, 2005.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense, Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 05-7251 Filed 4-11-05; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF STATE

[Public Notice 5047]

Culturally Significant Objects Imported for Exhibition Determinations: "For Your Approval: Oil Sketches by Tiepolo"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "For Your Approval: Oil Sketches by Tiepolo," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, California, from on or about May 3, 2005 to on or about September 4, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453-8054.) The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: March 3, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-7297 Filed 4-11-05; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 13, 2005.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-____." Alternatively, comments may be transmitted via facsimile to (202) 493-6068 or (202) 493-6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Mr. Angelo at victor.angelo@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Victor Angelo, Office of Support Systems, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or

renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)-(iv); 5 CFR 1320.8(d)(1)(I)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Supplemental Qualifications Statement for Railroad Safety Inspector Applicants.

Form Number: FRA-F-120.

OMB Control Number: 2130-0517.

Abstract: The Supplemental Qualifications Statement for Railroad Safety Inspector Applicants is an information collection instrument used by FRA to gather additional background data so that FRA can evaluate the qualifications of applicants for the position of Railroad Safety Inspector. The questions cover a wide range of general and specialized skills, abilities, and knowledge of the five types of railroad safety inspector positions.

Affected Public: Individuals or Households.

Frequency of Submission: On occasion.

Estimated Number of Respondents: 2,000 Applicants.

Estimated Average Burden per Respondent: 3 hours.

Estimated Total Annual Burden: 6,000 hours.

Status: Extension of a currently approved collection.

Title: Railroad Worker Protection (49 CFR 214).

OMB Control Number: 2130-0539.

Abstract: This rule establishes regulations governing the protection of railroad employees working on or near railroad tracks. The regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities, as well as employees' rights and responsibilities thereto; well-defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad is subject to review and approval by FRA. Part 214 regulations have been deemed different enough from the Part 213 regulations as to require a separate and distinct reporting form (new Form FRA F 6180.119). Regardless of discipline, the FRA inspector will complete the new Roadway Workplace Safety Violation Report Form (FRA F 6180.119) when recommending civil penalties for Part 214 infractions.

Affected Public: Railroads.

Form Number: FRA F 6180.119.

Frequency of Submission: On occasion.

Estimated Number of Respondents: 579 railroads.

Estimated Total Annual Burden: 589,139 hours.

Status: Extension of a currently approved collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC on April 6, 2005.

D.J. Stadlter,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. 05-7314 Filed 4-11-05; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Request Approval From the Office of Management and Budget (OMB) of One New Public Collection of Information**

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one new public information collection which will be submitted to OMB for review.

DATES: Comments must be received on or before June 12, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address, at (202) 267-9895, or by e-mail at: Judy.Street@faa.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collection of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. 2120-XXXX, Pilot Training and Experience with Transport Category Rudder Control Systems. The FAA intends to conduct a voluntary survey of commercial pilots in order to gather information on issues regarding rudder use. The goal is to assess current airplane control characteristics, pilot interfaces, and training in order to affect policy and improve overall aviation safety. We expect approximately 1000 pilots to participate, and the estimated one-time reporting burden is 500 hours.

Issued in Washington, DC, on April 6, 2005.

Judith D. Street,
FAA Information Collection Clearance Officer, ABA-20.
[FR Doc. 05-7317 Filed 4-11-05; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information**

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before June 13, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267-9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120-0009, Pilot Schools—FAR 141. Chapter 447, Subsection 44707, authorizes certification of civilian schools giving instruction in flying. 14 CFR Part 141 prescribes requirements for pilot schools certification. Information collected is used for certification and to determine compliance. The respondents are applicants who wish to be issued pilot school certificates and associated ratings. The current estimated annual reporting burden is 28,878 hours.

2. 2120-0044, 14 CFR part 133, Rotorcraft External-Load Operations. This regulation was adopted to establish certification rules governing non-passenger-carrying rotorcraft, external-load operations conducted for compensation or hire. The applicants

are individual airmen, state and local governments, and businesses, and the information collected will be used to establish their compliance with the regulation. The current estimated annual reporting burden is 3,268 hours.

3. 2120-0633, Exemptions for Air Taxi and Commuter Air Carrier Operations. 14 CFR Part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators. In order to be exempted from this requirement, such operators must apply for exemption with the DOT. This collection is used to ensure that affected companies comply with the requirements under this regulation. The current estimated annual reporting burden is 1,020 hours.

4. 2120-0680, Part 60—Flight Simulation Device Initial and Continuing Qualification and Use (NPRM). The collection of this information is necessary to ensure safety of flight by ensuring complete and adequate training, testing, checking, and experience is obtained and maintained by those who operate under 14 CFR Parts 61, 63, 91, 121, 135, 141, and 142 of the regulation and who use flight simulation in lieu of aircraft for these functions. The current estimated annual reporting burden is 201,653 hours.

Issued in Washington, DC, on April 6, 2005.

Judith D. Street,
FAA Information Collection Clearance Officer, ABA-20.
[FR Doc. 05-7318 Filed 4-11-05; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Commercial Space Transportation Advisory Committee—Open Meeting**

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, May 26, 2005, starting at 8 a.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC, in the Bessie Coleman

Conference Center, 2nd Floor. This will be the forty-first meeting of the COMSTAC.

The proposed agenda for the meeting will be the release of the 2005 Commercial Space Transportation Market Forecasts, a financial report on the U.S. industry, and an activities report from FAA's Office of Commercial Space Transportation. An agenda will be posted on the FAA Web site at <http://ast.faa.gov>. Meetings of the COMSTAC Working Groups (Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support) will be held on Wednesday, May 25, 2005. For specific information concerning the times and locations of the working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST-100), Office of the Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267-3674; e-mail brenda.parker@faa.dot.gov.

Issued in Washington, DC, April 1, 2005.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 05-7321 Filed 4-11-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2000-7257; Notice No. 34]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Patricia Butera or Lydia Leeds, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493-6212/6213 or Grady Cothen, Deputy Associate

Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493-6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of October 19, 2004, (69 FR 61550). The 25th full Committee meeting was held January 26, 2005.

Since its first meeting in April of 1996, the RSAC has accepted nineteen tasks. Status for each of the tasks is provided below:

Open Tasks

Task 96-4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen, (202) 493-6302.

Task 97-1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. On April 14, 2004, the RSAC reached consensus on the Notice of Proposed Rulemaking (NPRM). The NPRM is a new standard to increase the crashworthiness of conventional wide- and narrow-nose locomotives and codifies requirements for monocoque locomotives. On November 2, 2004, FRA published an NPRM in the **Federal Register** (69 FR 63990) 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 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 the request, FRA extended the comment period until February 3, 2005. The Working Group will be asked to review the comments and offer recommendations for responding to them. Contact: Charles Bielitz, (202) 493-6314 or Darrell Tardiff, (202) 493-6037.

Task 97-2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation) (Completed)
(Noise exposure) On June 27, 2003, the full RSAC gave consensus by ballot on the NPRM. The NPRM was published in the **Federal Register** on June 23, 2004. The comment period ended September 21, 2004. Task Force and Working Group meetings were held March 1, and March 2 and 3, 2005, respectively, to review the public comments and recommend a final rule. The Working Group reached agreement on all issues, and its report will be presented to the full Committee on May 18, 2005.

(Cab Temperature) (Completed)

Note: Additional related topics such as vibration may be considered by the Working Group in the future. Contact: Jeffrey Horn, (202) 493-6283.

Task 97-3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. On November 12, 2003, the RSAC gave consensus by ballot on the NPRM. The NPRM was published on June 30, 2004. A public hearing was held September 30, and the comment period was extended until October 11. The Locomotive Event Recorder Working Group met on December 15-16, 2004, to discuss all comments received in response to the NPRM. FRA staff is drafting the final rule based on these discussions. The draft final rule will be circulated for review and ballot approval. Contact: Edward Pritchard, (202) 493-6247.

Task 97-4 and *Task 97-5*—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. *Task 97-6*—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three Tasks were accepted on September 30, 1997, and assigned to a single Working Group.

(Report to the Administrator) A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The FRA enclosed the report with a letter to Congress signed May 17, 2000.

(Regulatory development) The Standards Task Force, formed to develop PTC standards, assisted in

developing draft recommendations for performance-based standards for processor-based signal and train control systems. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas, to formulate recommendations for resolution of issues raised in the public comments. Agreement was reached on most issues raised in the comments. A meeting was held May 14–15, 2002, in Colorado Springs, Colorado, at which the Working Group approved creation of teams to further explore the “base case” issue. Briefing of the full RSAC on the “base case” issue was completed on May 29, 2002, and consultations continued within the working group. The full Working Group met October 22–23, 2002, and again March 4–6, 2003. Resolution of the remaining issues was considered by the Working Group at the July 8–9, 2003, meeting. The Working Group achieved consensus on recommendations for resolution of a portion of the issues in the proceeding. The full Committee considered the Working Group recommendations by mail ballots scheduled for return on August 14, 2003; however, a majority of the members voting did not concur. FRA has proceeded with preparation of a final rule. FRA completed the final rule and placed it in review and clearance within the Executive Branch on September 29, 2003. After the rule was withdrawn and resubmitted, OMB completed review of the final rule on December 29, 2004. The final rule was published in the **Federal Register** on March 7, 2005, (70 FR 11051). Contact: Grady Cothen, (202) 493–6302.

Task 03–01—Passenger Safety. This Task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting held November 6–7, 2003, five task groups were established: crashworthiness/glazing; emergency preparedness; mechanical—general issues; mechanical—safety appliances; and track/vehicle interaction. The task groups met and reported on activities

for Working Group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. Initial recommendations on mechanical issues (revisions to 49 CFR Part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of March 9–10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency egress and rescue access. These recommendations will be presented to the full Committee on May 18, 2005. Contact: Charles Bielitz, (202) 493–6314.

Task 05–01—Review of Roadway Worker Protection issues. This Task was accepted on January 26, 2005, to review 49 CFR 214, Subpart C, Roadway Worker Protection, and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group will be established and will report to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group has been set for April 12–14, 2005. The Working Group will report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion. Contact: Christopher Schulte, (202) 493–6251.

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress

entitled, Locomotive Crashworthiness & Working Conditions.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Completed—task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA’s regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on April 5, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–7315 Filed 4–11–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34660]¹

Georgia Central Railway, L.P.— Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.

Georgia Central Railway, L.P. (Georgia Central), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by purchase from CSX Transportation, Inc. (CSXT), and operate approximately 57.92 miles of rail line between milepost SK 0.08 at Macon, and milepost SK 58.0 at East Dublin, in Bibb, Twiggs, Wilkinson, and Laurens Counties, GA.²

¹ This notice of exemption was previously served and published in the **Federal Register** on March 3, 2005 (70 FR 10476–77). By letter filed on April 4, 2005, Georgia Central’s counsel notified the Board of an error in the milepost designation at Macon and, consequently, the rail miles involved in the transaction. Accordingly, the Board is republishing the notice to reflect the correct milepost and mileage.

² Georgia Central has been, prior to the transaction, leasing the line and underlying right-of-way from CSXT. After the transaction, Georgia Central will own the track and improvements on the line but continue to lease the underlying real

Georgia Central indicated that the parties contemplated consummating the transaction on or about February 28, 2005. Georgia Central certified that its projected revenues as a result of this transaction would not result in the creation of a Class II or Class I rail carrier.³

If the 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. 34660, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Andrew B. Kolesar III, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at <http://WWW.STB.DOT.GOV>.

Decided: April 5, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05-7184 Filed 4-11-05; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 5, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 12, 2005 to be assured of consideration.

property from CSXT. Georgia Central will also continue to be the operator of the line.

³ Georgia Central also stated that its projected annual revenues following the transaction will exceed \$5 million, but it requested waiver of the 60-day advance labor notice requirement at 49 CFR 1150.42(e). That request was granted by Board decision served on February 28, 2005.

Internal Revenue Service (IRS)

OMB Number: 1545-1780.

Regulation Project Number: REG-136193-01 Final.

Type of Review: Extension.

Title: Notice of Significant Reduction in the Rate of Future Benefit Accrual.

Description: In order to protect the rights of participants in qualified pension plans, plan administrators must provide notice to plan participants and other parties, if the plan is amended in a particular manner. No government agency receives this information.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Respondent: 10 hours.

Frequency of response: Other (once).

Estimated Total Reporting Burden: 40,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05-7290 Filed 4-11-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE-14-81]

Proposed Collection; Comment Request for Regulation Project

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 an existing notice of proposed rulemaking, EE-14-81, Deductions and Reductions In Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans

Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations (§§ 1.404A-5, 1.404A-6 and 1.404A-7).

DATES: Written comments should be received on or before June 13, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, room 6515, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Deductions and Reductions In Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

OMB Number: 1545-1393.

Regulation Project Number: EE-14-81.

Abstract: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. The information required by the regulation will be used by the IRS to administer section 404A of the Internal Revenue Code and to accurately determine the correct deductions and reductions in earnings and profits attributable to deferred compensation plans maintained by foreign subsidiaries and foreign branches of domestic corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

Estimated Time Per Respondent: 508 hours.

Estimated Total Annual Burden Hours: 634,450.

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: April 4, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5-1706 Filed 4-11-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637

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 637, Application for Registration (For Certain Excise Tax Activities).

DATES: Written comments should be received on or before June 13, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, 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: Application for Registration (For Certain Excise Tax Activities).

OMB Number: 1545-0014.

Form Number: Form 637.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the federal excise tax on taxable fuel imposed under Code sections 4041 and 4071; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions, and farms.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 13 hr., 54 min.

Estimated Total Annual Burden

Hours: 27,800.

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: March 31, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5-1707 Filed 4-11-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS-7-89]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, PS-7-89 (TD 8684), Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders (§ 1.1254-4).

DATES: Written comments should be received on or before June 13, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection 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:* Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

OMB Number: 1545-1493.

Regulation Project Number: PS-7-89.

Abstract: This regulation prescribes rules under Code section 1254 relating to the treatment by S corporations and their shareholders of gain from the disposition of natural resource recapture property and from the sale or exchange of S corporation stock. Section 1.1254-4(c)(2) of the regulation provides that gain recognized on the sale or exchange of S corporation stock is not treated as ordinary income if the shareholder attaches a statement to his or her return containing information establishing that the gain is not attributable to section 1254 costs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

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: April 5, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5-1708 Filed 4-11-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Bylaw Amendments

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to restate this information collection.

DATES: Submit written comments on or before June 13, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906-6518; or send an e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Marilyn K. Burton, Senior Paralegal (Regulations), (202) 906-6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Amendment of a Savings Association's Bylaws.

OMB Number: 1550-0017.

Form Number: N/A.

Regulation requirement: 12 CFR parts 544 and 552.

Description: 12 CFR parts 544 and 552 require federally chartered savings associations to obtain agency approval of any changes in their bylaws that are not preapproved by regulation.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 9.

Estimated Burden Hours per

Response: 8 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 72 hours.

Clearance Officer: Marilyn K. Burton, (202) 906-6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark Menchik, (202) 395-3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: April 6, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 05-7274 Filed 4-11-05; 8:45 am]

BILLING CODE 6720-01-P

Corrections

Federal Register

Vol. 70, No. 69

Tuesday, April 12, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition Under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

Correction

In notice document 05-6733 beginning on page 17074 in the issue of

April 4, 2005, the entire text was incorrect and was published erroneously. The correct text of 05-6733 was filed for public inspection on March 31, 2005, but was not published. The document published erroneously is withdrawn. The correct text to notice document 05-6733 is published in the Notices section of this issue of the Federal Register.

[FR Doc. C5-6733 Filed 4-11-05; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Tuesday,
April 12, 2005**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Designation of Critical Habitat for
the Riverside Fairy Shrimp
(*Streptocephalus woottoni*); Final Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018—AT45

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Riverside Fairy Shrimp (*Streptocephalus woottoni*)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the federally endangered Riverside fairy shrimp (*Streptocephalus woottoni*) pursuant to the Endangered Species Act of 1973, as amended (Act). The critical habitat designation encompasses approximately 306 acres (ac) (124 hectares (ha)) of land within Ventura, Orange, and San Diego counties, California.

DATES: This rule becomes effective on May 12, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009 (telephone 760/431-9440). The final rule, economic analysis, and maps of the designation are also available via the Internet at <http://carlsbad.fws.gov>.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9618).

SUPPLEMENTARY INFORMATION:**Designation of Critical Habitat Provides Little Additional Protection to Species**

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that

additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat are paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, of the 1,253 listed species in the U.S. under the jurisdiction of the Service, only 470 species (38 percent) have designated critical habitat.

We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that the recent 9th Circuit judicial opinion in the case of *Gifford Pinchot Task Force v. United States Fish and Wildlife Service* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions

with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Among the rarest animal species endemic (native) to Southern California is a tiny freshwater crustacean known as the Riverside fairy shrimp (*Streptocephalus woottoni*). Its distribution is highly restricted, with most of the known populations of the endangered Riverside fairy shrimp observed in vernal pools located in portions of a few counties and 50 miles (mi) (24 kilometers (km)) or less from the California coast, and ranging only approximately 125 mi (200 km) from its known northern limit (Ventura and Los Angeles counties) to its southern limit (Mexico border, San Diego County) within the U.S. (Eng *et al.* 1990; Simovich and Fugate 1992; Eriksen and Belk 1999; Service 2004 (69 FR 23024)). It does not occur in the nearby desert or

mountain areas (Hathaway and Simovich 1996). It is also among the most recently discovered freshwater crustacean species in California, first identified in 1985 as a unique species (Eng *et al.* 1990) in the genus *Streptocephalus* (Baird 1852). With 63 species that occur worldwide (retrieved February 22, 2005, from the Integrated Taxonomic Information System on-line database, <http://www.itis.usda.gov>), *Streptocephalus* is the most species-rich genus within the aquatic crustacean order Anostraca, which comprises over 258 fairy shrimp species and 7 subspecies worldwide, organized into 21 genera (Belk *et al.* 1993). The fairy shrimp (Anostraca) are, except for one other group, the most primitive living crustaceans, or members of the sub-phylum Crustacea (Eriksen and Belk 1999). Among the 23 fairy shrimp (Anostracan) species that are found in California, 8 species are found only in this State, giving California the highest level of endemism for any comparable geographic region in North America (Eng *et al.* 1990), and resulting in the highest number of species occurring in a comparable land area in both North America and worldwide (Eriksen and Belk 1999). Despite this fact, the level of knowledge about many Anastrocans is relatively low due to the relative recentness of their discovery.

The Riverside fairy shrimp and vernal pool crustaceans in general, occupy the first consumer level in the food chain, and thus constitute a cornerstone in the food web. Fairy shrimp form an important food source for an array of aquatic and terrestrial species, from diving beetles, backswimmers (Notonectids), vernal pool tadpole shrimp (*Branchinecta* species), predaceous aquatic insects and their larvae, to waterfowl and shorebirds, and occasionally even for frogs, toads, and tadpoles (Eriksen and Belk 1999). Humans have also been known to consume fairy shrimp; tribes in California have been known to extensively consume dried *Artemia*, and *Tripes* is said to be used as food by some natives in Mexico (Pennak 1989).

The Riverside fairy shrimp, along with numerous sensitive and rare plant species, lives only in vernal pools, vernal ponds, swales, and ephemeral (short-lived) freshwater habitats. A vernal pool (including vernal pond and vernal lake) is defined as an area of shallow depression, usually underlain by some subsurface layer which prohibits drainage into the lower soil profile, thus causing water to collect during the rainy winter season (Holland 1976; Chetham 1976; Weitkamp *et al.* 1996), *i.e.*, the depression is inundated

for portions of the wet season, when temperatures are sufficient for plant growth (Keeley and Zedler 1998). Following a brief waterlogged period during the late wet season or early dry season, a vernal pool will eventually drain and dry out, followed by an extended period of extreme soil-drying conditions (Keeley and Zedler 1998; Rains *et al.* 2005). Swales are defined as shallow drainages that carry water seasonally. Central to the distinctive ecology of vernal pools is that they are vernal, or ephemeral, *i.e.*, occurring only temporarily, during late winter and spring. The water in vernal pools stands sufficiently long to prohibit zonal vegetation growth (Holland 1976), yet not long enough to allow for colonization by fish species. Vernal pool habitat thus forms a unique type of ecosystem, different in character and species composition from the surrounding habitats (Service 2003; 68 FR46684), and being intermediate between marsh (nearly always wet) and most zonal vegetation communities (nearly always dry) (Holland 1976). In California, where extensive areas of vernal pool habitat have developed over long periods, unique species groups have evolved special adaptations to allow them to survive the unusual conditions of vernal pools. Vernal pools are often defined by their unique, often endemic, flora as well (Smith and Verrill 1998).

The Riverside fairy shrimp occupies, and is thus completely dependent upon, vernal pools to survive. A combination of physical and environmental factors allows for the annual formation and maintenance of their vernal pool habitat. Vernal pools form generally where there is a Mediterranean climate, *i.e.*, a wet season during fall and winter, when rainfall exceeds evaporation and fills the pools, followed by a spring and summer dry season, when evaporation exceeds rainfall and the pools dry up. A typical vernal pool season is characterized by an inundation phase, an aquatic phase, a water-logged drying phase, and a dried-out phase (Keeley and Zedler 1998). Thus, the water regime (hydrologic system) is crucial to the formation and functioning of a healthy vernal pool ecosystem. Some pools fill entirely from direct precipitation (Hanes and Stromberg 1998), while others have a substantial watershed, including both surface, subsurface, and groundwater, flowing through the surrounding bedrock and soils that contributes to their water inputs (Rains *et al.* 2005).

Vernal pools can be a variety of shapes and sizes, from less than a square yard (0.8 square meters (m²), to

2.5 ac (1 ha) or more. They occur on gently sloping mesas above the primary drainages, or in valleys at the low end of a watershed (Bauder and McMillan 1998). Vernal pools may be fed or connected by low drainage pathways, or swales. The micro-relief of a vernal pool may be complex, and some are dotted with numerous rounded soil mounds (mima) (Scheffer 1947). Their typical patterning, visible from the air, has allowed a number of vernal pools to be mapped throughout California's Central Valley, on a 10–40 ac unit scale (Holland 1998; 2003, Service 2003). The landscape in which they occur is typically grassland, but vernal pools also occur in a variety of other habitat types (Service 2003).

A critical factor in the development of a vernal pool is the soil conditions of the landscape (an impermeable surface or subsurface layer) and a gently sloping topography (slope of 10 percent or less). Vernal pools form because the soil or sediment layer at or below the surface is nearly or completely impermeable to downward water seepage (Smith and Verrill 1998), and thus rainfall and water from the surrounding watershed becomes trapped above this layer. Soil types of the California vernal pools are volcanic flows, and hardpans and claypans, the latter of which have developed gradually over thousands of years, and can be a yard (1 m) or more thick. The unique assemblage of soils plays a critical role in nutrient cycling in vernal pool ecosystems. The soil types which underlie and surround the vernal pool therefore greatly influence the species composition of both plant and animals, as well as the hydrological functioning of the vernal pool (Hanes and Stromberg 1998; Hobson and Dahlgren 1998; Smith and Verrill 1998). Because water and precipitation flow through the soil to the pool, the chemistry of the soils underlying a vernal pool, and in the surrounding upslope areas, is directly linked to the chemistry of the vernal pool's water, *i.e.*, on its alkalinity, pH, oxidation and reduction processes, dissolved salts and gasses, ion concentrations, mineral richness, and organic material. Thus, soil chemistry likely has a tremendous impact on aquatic invertebrate endemism (cf. Hobson and Dahlgren 1998). The distinct seasonality of vernal pools results in alternating conditions of reduction and oxidation within the soil profile, creating edaphic (soil-influenced) controls that may provide a refuge for competition-sensitive plant and animal species (Hobson and Dahlgren 1998). The length of ponding may also be affected by variables like

consistency of soil, depth of soil to impervious layer (e.g., duripan, claypan), type and thickness of the impervious layer, and local climatic factors (e.g., rainfall abundance and regularity, evaporation rates; Helm 1998).

Because of the transportation of water, soil, minerals and nutrients over the landscape into vernal pools, the upland, or upslope areas associated with vernal pools are an important source of these for vernal pool organisms (Wetzel 1975). Since vernal pools are mostly rain-fed, they tend to have low nutrient levels (Keeley and Zedler 1998). In fact, most of the nutrients that vernal pool crustaceans derive from their vernal pool habitat come from the detritus (decaying organic matter) that washes into pools from the adjacent upslope areas; these nutrients provide the foundation for the food chain in the vernal pool aquatic community (Eriksen and Belk 1999), of which the fairy shrimp fauna constitutes an important component.

Typical to vernal pools are their dramatic fluctuations in local environmental conditions. The water, generally unbuffered, fluctuates greatly on a daily basis in pH, and concentrations of ions and dissolved gasses (oxygen and carbon dioxide), due to varying daily evaporation (Keeley and Zedler 1998). On a larger time-scale, there is extensive monthly and annual variation in the duration and extent of ponding of vernal pools, some pools not filling at all in some years, as the timing and amount of annual rainfall in California varies widely. Because of the unique and ephemeral nature of vernal pool habitat, and the adaptations of its plant and animal species, vernal pools are rich in species composition and contain a large number of highly specialized, native species that are found nowhere else in the region (endemic) (Holland and Jain 1978; Simovich 1998). Vernal pool habitats yield the highest number and species richness of endemics (native species) in comparison to other wetland types (Helm 1998).

Riverside Fairy Shrimp (*Streptocephalus woottoni*)

The Riverside fairy shrimp is a small (0.56–0.92 inches (in) (14–23 millimeters (mm))), slender Anostracan that has large stalked compound eyes and a delicate, elongate body with 11 pairs of phylloids, or swimming appendages, which also function as gills (Eng *et al.* 1990; Eriksen and Belk 1999). Using their phylloids in a complex, wavelike motion from front to back, they swim gracefully upside-down. As

they swim about, fairy shrimp use these same appendages to filter-feed from the water column, allowing them to non-selectively consume algae, bacteria, protozoa, rotifers and bits of detritus (Eng *et al.* 1990; Eriksen and Belk 1999). Note that nothing is known specifically about the Riverside fairy shrimp's food resource requirements (Simovich and Ripley, pers. comm., May 25, 2004).

Riverside fairy shrimp are distinguished from other fairy shrimp species primarily by the second pair of antennae on the adult male, which are enlarged for grasping the female during copulation (Pennak 1989; Eriksen and Belk 1999; Service 2003). Both males and females are generally off-white in color, with orange pigment in their tail appendages (cercopods) and sometimes along the edges of the phylloids (although some females have been observed to be entirely bright red-orange) (Eriksen and Belk 1999). The females, when mature, can be identified by their brood pouch, the elongate, ventral protruding egg sac immediately behind the phylloids (Eriksen and Belk 1999).

Relative to most other fairy shrimp species, the Riverside fairy shrimp is a rare species with a highly restricted distribution (Hathaway and Simovich 1996). They are found only in a few pools at lower elevations in the Southern California coastal range that are inundated for a longer duration and generally deeper (greater than 12 in or 30 centimeters (cm)) than pools that support San Diego fairy shrimp (*Branchinecta sandiegonensis*) (Hathaway and Simovich 1996). Some of these pools may have been artificially deepened with berms (*i.e.*, cattle tanks and road embankments) (Hathaway and Simovich 1996). The two species are known to co-occur in a few deep pools; however they generally do not co-exist, as adults of the Riverside fairy shrimp emerge later in the season than San Diego fairy shrimp (Simovich and Fugate 1992; Hathaway and Simovich 1996).

After copulation, the males of some fairy shrimp species die within a few hours (Pennak 1989). When the eggs are fertilized in the female's pouch, they become coated (encysted) with a protein layer that develops into a thick, usually multilayered shell (Eriksen and Belk 1999). When the egg enters the late stage of embryonic development, all growth then ceases, and the egg enters into a dormant stage, or diapause (Drinkwater and Clegg 1991; Eriksen and Belk 1999). The female then either ejects the cysts to fall to the pool bottom, or, if she survives for an extended period, continues to move successive clutches

of eggs into her brood pouch. If the vernal pool persists for several weeks to a few months, fairy shrimp may have multiple hatches in a single season (Eriksen and Belk 1999). Cysts can also remain in the brood pouch until the female dies and sinks to the pool bottom (Eriksen and Belk 1999). However, females of some fairy shrimp species can, in the presence of male adults during the wet period, eject thin-shelled cysts that hatch immediately without becoming dormant ("summer eggs"), thus allowing for multiple generations during a single wet season, while the thick-shelled, dormant ("winter") eggs are deposited in the absence of males in the population (Pennak 1989). By the time the pool dries out, the numbers of dormant cysts within each pool basin can reach tens of thousands to millions, depending on pool size, volume, and depth (Belk 1998).

Mature cysts become fully desiccated (dried) after their pool has evaporated, and due to their protective coating, they can withstand extreme environmental conditions (Pennak 1989; Eriksen and Belk 1999). For example, they can survive subjection to physical extremes, such as near-boiling temperatures, months of freezing (Carlisle 1968), fire (Wells *et al.* 1997), or near-vacuum conditions for 10 years without damage to the embryo (Clegg 1967). These adaptations allow fairy shrimp cysts to survive extreme environmental fluctuations, and hatch only when conditions are favorable, after remaining dormant for as much as decades, possibly centuries (Belk 1998). In one closely related fairy shrimp, *Streptocephalus sealii*, cysts were brought to hatch after 25 years of storage in the lab (Belk 1998). Further, because the wall of the cyst can even resist damage by stomach enzymes (Horne 1966), the cyst can pass through the digestive tract of animals without harm, thus allowing for one possible mechanism of cyst dispersal. There are several mechanisms for cyst dispersal, and thus fairy shrimp dispersal, to other habitats. Historically, large-scale flooding from heavy winter and spring rains has been a primary dispersal mechanism, but other major mechanisms include dispersal by migratory birds (*i.e.*, wading birds, shorebirds, waterfowl), ungulates (*i.e.*, cattle, buffalo, deer), and possibly amphibians (*i.e.*, salamanders, frogs) and humans (Eriksen and Belk 1999). These animals either carry cyst-containing mud on their bodies incidentally from pool to pool, or the cysts are ingested and are passed through the gut at another location.

Wind, although less probable, may also be a dispersal agent (Eriksen and Belk 1999).

Although cysts can remain dormant within the pool for decades, they can also hatch about a week after a rain-fill, due to their advanced stage of embryonic development (Pennak 1989; Hathaway and Simovich 1996). However, when a dry vernal pool is once again inundated with water, only a fraction of the dormant cysts in the pool will hatch. Simovich and Hathaway (1997) found that when Riverside fairy shrimp cysts were hydrated once, only 0.18 percent hatched, and after three successive hydration periods, the cumulative total increased to only 2.8 percent. This is among the lowest hatching rates, or prolonged diapause, yet recorded among fairy shrimp species (Simovich and Hathaway 1997). They suggested that the prolonged diapause of so many cysts was an adaptation to the variable nature of local rainfall patterns, as pools at times fill only partially and dry quickly—before the fairy shrimp are able to reach maturity and reproduce. Thus, in such an environment with unpredictable filling events, it benefits the individual to have offspring in prolonged diapause, such that not all hatch after just one hydration (Simovich and Hathaway 1997). In San Diego County, only approximately 28 percent of all filling events recorded over 13 years lasted at least a 17-day period, the minimum length of time needed by the San Diego fairy shrimp to develop to first reproduction (and insufficient time for the Riverside fairy shrimp); this period corresponded to the 28-percent hatching rate for their cysts found in the lab (Philippi 2001). This strategy of prolonged diapause is possibly a risk-spreading (“bet-hedging”) adaptation to the unpredictability of their environment (Simovich and Hathaway 1997; Philippi 2001).

In addition to their low hatching percentage, the cysts of the Riverside fairy shrimp also take longer to hatch after inundation, relative to other species (Hathaway and Simovich 1996). The time from hydration to the hatching of Riverside fairy shrimp cysts took between 12 to 25 days in the lab at varying temperatures, with the most rapid hatching occurring when temperatures were fluctuating at 41–59 degrees Fahrenheit ((F) 5–15 degrees Celsius (C)). San Diego fairy shrimp, in comparison, can hatch after only 3 days (Hathaway and Simovich 1996). The greatest number of Riverside fairy shrimp cysts hatching in the lab, however, was achieved at 50 degrees F (10 degrees C) (Hathaway and Simovich

1996). Their development or maturation rate is also slow, and individuals are relatively long-lived (Hathaway and Simovich 1996), as is typical of obligate deep pool species. The developmental time to maturity for the Riverside fairy shrimp was found to be 7–8 weeks, far longer than to the 7–10 day period of the San Diego fairy shrimp.

It is not surprising, therefore, that the Riverside fairy shrimp also lives much longer (2.5 to over 4 months) than the San Diego fairy shrimp (4–6 weeks) (Hathaway and Simovich 1996). Thus, the minimum period of inundation, or pool duration, that the Riverside fairy shrimp need in order to hatch and reach maturity is 9 to 10 weeks (Gonzalez *et al.* 1996; Hathaway and Simovich 1996). Thus, the association of the Riverside fairy shrimp with large, deep vernal pools that pond continuously for many months may perhaps be explained by its long period of maturity and longevity (cf. Helm 1998). Because of their slow hatch and growth, the Riverside fairy shrimp occur therefore much later in the season than other fairy shrimp species (cf. Hathaway and Simovich 1996).

The vernal pools that Riverside fairy shrimp are found in typically have water with a relatively neutral pH (approximately 7), low to moderate salinity, and low to moderate levels of total dissolved solids (Gonzalez *et al.* 1996; Eriksen and Belk 1999). One laboratory study conducted on the tolerance of Riverside fairy shrimp to variations in water chemistry found that they tolerate an 8-hour exposure to pH levels ranging from 8 to 10.5, with little effect (Gonzalez *et al.* 1996). Generally, in vernal pools where Riverside fairy shrimp occur, the external ion concentrations (Na⁺) averaged 0.73 mmol/l³ (Gonzalez *et al.* 1996). Although the species was also able to maintain its internal levels of salt concentration fairly constantly over a wide range of external concentrations (0.5–60 mmol/l³), it was sensitive to the extremes, with 100-percent mortality occurring at 100 mmol/l³ (Gonzalez *et al.* 1996). Levels of alkalinity in the vernal pool are affected by the surrounding soil type and hydrological regime of the immediate adjacent upland watershed; in four vernal pools, alkalinity averaged 41 mg/l³ (Gonzalez *et al.* 1996). In the laboratory, Riverside fairy shrimp were found to tolerate a wide range of alkalinities (0–600 mg/l³), but none could survive levels above 800 mg/l³ (Gonzalez *et al.* 1996). Importantly, studies show that the Riverside fairy shrimp is sensitive to water temperature; with their hatching occurring a longer time after inundation (25 days) and fewer hatching (1–3

percent) at steady higher temperature of 77 degrees F (25 degrees C), than at cooler temperatures (*i.e.*, 7 days hatching time at 59–77 degrees F (15–25 degrees C); over 10 percent hatching at 50 degrees F (10 degrees C) (Gonzalez *et al.* 1996).

The upslope areas surrounding vernal pools are critical to the functioning of the vernal pool and thus to the survival of the Riverside fairy shrimp. The surrounding upslope areas provide the vernal pool with the appropriate annual and season temporality and volume of hydrological flow. With that flow follows the necessary nutrients, salts and minerals from the soil and bedrock that all influence the pool's water volume, the duration of ponding, and the complete chemistry, mineral and nutrient contents of the water itself. Therefore, Riverside fairy shrimp, together with its cohabitating vernal pool flora and fauna, is as dependent upon the upland areas for survival and reproduction as it is upon the pool it occupies.

Urban and water development, flood control, and highway and utility projects, as well as conversion of wild lands to agricultural use, have eliminated or degraded vernal pools and/or their watersheds in southern California (Jones and Stokes Associates 1987). Changes in hydrologic patterns, certain military activities, unauthorized fills, overgrazing, and off-road vehicle use also may imperil this aquatic habitat and the Riverside fairy shrimp. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986). Anthropogenic (human-origin) activities that reduce the extent of the watershed or that alter runoff patterns (*i.e.*, amounts and seasonal distribution of water) may eliminate the Riverside fairy shrimp, reduce population sizes or reproductive success, or shift the location of sites inhabited by this species. The introduction of non-native plant species, competition with invading species, trash dumping, fire, and fire suppression activities were some of the reasons for listing the Riverside fairy shrimp as endangered on August 3, 1993 (58 FR 41384). Because of these threats, we anticipate that intensive long-term monitoring and management will be needed to conserve this species. Historically, vernal pool soils covered approximately 500 km² (200 mi² of San Diego County (Bauder and McMillan 1998). The greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Rancho Peñasquitos, and Kearny Mesa, which together account for 73 percent of all the pools destroyed in the region during the

7-year period between 1979 and 1986 (Keeler-Wolf *et al.* 1995). Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed between 1979 and 1990. Similar to San Diego County, vernal pool habitat was once extensive on the coastal plain of Los Angeles and Orange counties. Unfortunately, there has been a near-total loss of vernal pool habitat in these areas (Ferren and Pritchett 1988; Keeler-Wolf *et al.* 1995; Mattoni and Longcore 1997; Service 1998). Significant losses of vernal pools supporting this species have also occurred in Riverside County.

Adequately quantifying occurrence and distribution of the Riverside fairy shrimp can be difficult due to a number of factors. Firstly, Riverside fairy shrimp are restricted to a narrow geographic region, to certain pool types, and also temporally, as they emerge later in the season than other fairy shrimp species (Hathaway and Simovich 1996). Thus, surveys conducted to also encounter earlier-occurring species may actually miss the Riverside fairy shrimp as they may still be so small (in the juvenile stage) that they pass through the mesh of the collecting nets (Eriksen and Belk 1999). Secondly, surveys may also miss collecting adults simply due to their low hatching percent (as few as 0.18 percent; Simovich and Hathaway 1997), which may result in either a very low population level, or to none being detected in a particular year, when viable cysts are actually present. Further, only males can be identified to the species level with certainty (Eriksen and Belk 1999), and cysts can only be identified to the genus level. To add to the difficulty, vernal pools are generally too small to appear on topographic maps (Holland 1976), not all vernal pools fill each year, or fill long enough for hatching (*i.e.*, discovery) of the Riverside fairy shrimp. Some estimates for San Diego County show that over a period of 13 years, only about 28 percent of the pool-filling events lasted 17 days or longer (Philippi 2001).

For a more detailed discussion about the Riverside fairy shrimp's physical description, ecology, range, status and distribution, and a discussion of factors affecting this species, please refer to the following documents from the **Federal Register**: The final rule listing the species as threatened (58 FR 41384), published on August 3, 1993, the previous final rule to designate critical habitat (66 FR 29384), published on May 30, 2001, and our latest proposed rule to designate critical habitat (69 FR 23024), published on April 27, 2004.

Previous Federal Actions

For more information on previous Federal actions concerning the Riverside fairy shrimp, please refer to the proposed rule to designate critical habitat for the Riverside fairy shrimp (69 FR 23024) and the notice of availability for the draft economic analysis (DEA) and reopening of the public comment period for the proposed designation of critical habitat for the Riverside fairy shrimp published in the **Federal Register** (October 19, 2004, 69 FR 61461).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Riverside fairy shrimp in the proposed rule (69 FR 23024). We also contacted and invited the appropriate Federal, State, and local agencies, as well as scientific organizations and other interested parties to comment on the proposed rule. In the notice of availability of the draft economic analysis for the proposed designation of critical habitat (69 FR 61461), we again solicited comments from the public on both the draft economic analysis and the proposed rule. All comments and new information received during the two comment periods were incorporated into the final rule as appropriate.

During the first comment period, open from April 27, 2004, to May 27, 2004, we received 21 letters containing 143 comments directly addressing the proposed critical habitat designation from 6 peer reviewers, 5 Federal agencies, 2 county and local agencies, 1 group, 4 businesses, 1 city, 1 water district, 1 individual, and 1 law firm writing on behalf of 2 groups and 2 transportation agencies.

During the second comment period, open from October 19, 2004, to November 18, 2004, we received 11 letters containing 148 comments directly addressing the proposed critical habitat designation and the draft economic analysis. The letters came from 4 Federal agencies, 3 groups, 2 businesses, 1 law firm on behalf of 2 businesses, and 1 law firm on behalf of 2 groups and 2 transportation agencies.

Of a total 32 letters received, 4 supported the designation of critical habitat for the Riverside fairy shrimp, 2 opposed the designation, 18 letters suggested reducing the area of designation, and 4 letters suggested expanding the area. Two letters were requests for an extension of the comment submission period, but did not express support or opposition to the

proposed critical habitat designation. Comments received were grouped into six general issues specifically relating to the proposed critical habitat designation for the Riverside fairy shrimp, and are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing. We have reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the Riverside fairy shrimp, and have incorporated them into the final rule as appropriate. These are addressed below in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), to solicit opinions from at least three experts, we solicited the expert opinions of 7 knowledgeable individuals with significant scientific expertise that included familiarity with the Riverside fairy shrimp, the geographic region in which the species occurs, and conservation biology principles. We received responses from six of the peer reviewers. The peer reviewers were generally supportive of the designation of critical habitat, but strongly endorsed the approach that the appropriate management unit was the vernal pool complex (not single pools) together with their immediately surrounding upland watershed. They emphasized the importance of providing conservation protection of pool complexes to ensure the survival of the Riverside fairy shrimp in perpetuity, and of identifying and preserving all remaining populations of Riverside fairy shrimp, including those within conservation-managed areas. Three peer reviewers also gave specific comments on our decision to exclude certain lands from critical habitat based on Habitat Conservation Plans (HCPs) and Integrated Natural Resources Management Plans (INRMPs).

Comments From Peer Reviewers

1. *Peer Reviewer Comment*: Most of the reviewers stressed the importance of providing or increasing Federal protection to the Riverside fairy shrimp and their vernal pool habitat, since conservation measures are needed to protect them. Over 95 percent of vernal pools in Southern California have been extirpated (destroyed), and the remaining vernal pools and the species that inhabit them are currently under threat of elimination from both private and public organizations. Additionally, vernal pools are valuable in that they are ecologically unique, while also

providing valuable ecosystem functions. Vernal pool complexes act as hydrologic “sponges,” buffering against drought and flooding. Large-scale alterations or developments within the local watershed of vernal pool complexes would affect the local hydrology dramatically and, from an engineering and public works perspective, can lead to increases in the need for management of unnaturally large amounts of runoff following a rainstorm. Thus, vernal pools have not received adequate recognition in the rule for the benefits (ecological services) they provide. For their long-term survival, vernal pools must be adequately protected; the designation of critical habitat does not seem to provide adequate conservation measures to serve this purpose.

Our Response: Section 4 of the Act requires us to designate critical habitat to the maximum extent prudent and determinable, which we have done, based upon the best data available to us at this time. We concur that additional, long-term conservation measures are needed to protect the Riverside fairy shrimp and its habitat, and additional data is needed on locations of their occurrence.

In developing our final designation of critical habitat for the Riverside fairy shrimp, we used the best scientific and commercial data available to identify those areas that contain essential occurrences of Riverside fairy shrimp and/or are defined by the physical and biological features essential to their conservation. We used a number of criteria in defining critical habitat, including but not limited to the known species occurrence (known at the time of listing, as well as discovered subsequently) and distribution data, habitat types, presence of PCE's, degree of habitat fragmentation, soil and landform relationships, connectivity and dispersal factors, and conservation biology principles. We did not include all vernal pool landscapes within the Riverside fairy shrimp's range although surveys in these areas may result in the detection of other occurrences in the future. If significant information becomes available indicating that areas outside of our designation are essential to the conservation of the Riverside fairy shrimp, we can, under the Act, revise critical habitat in the future.

2. *Peer Reviewer Comment:* While the Service's proposed designation of critical habitat for the Riverside fairy shrimp in southern California was supported, reviewers stated it is questionable whether 5,795 acres in the proposed rule is “enough” critical habitat for the conservation of the remaining Riverside fairy shrimp

populations. Firstly, reviewers strongly emphasized the importance of considering the vernal pool complex and the surrounding watershed as the management unit for this species. The unique physiochemical requirements of the Riverside fairy shrimp make it particularly vulnerable to changes in hydrology. Further, other vernal pool species have their own unique ecological requirements in terms of soil, hydrology, etc. Protecting and maintaining entire vernal pool complexes and their surrounding watershed as a functioning unit will benefit the Riverside fairy shrimp and the other endangered species that live in these habitats. If the landscape at a site is changed sufficiently to alter the hydrology of individual vernal pools, then the species in them will eventually go extinct, regardless of whether the pools are disturbed or not. Secondly, some vernal pools excluded from the designation, but set aside for conservation or mitigation, do not have sufficient protection in the surrounding watershed, and thus become ecologically useless. The exclusion of military lands from the final designation is particularly troubling in this regard, because there are no guarantees that the watershed, let alone pools with Riverside fairy shrimp in them, will be adequately protected.

Our Response: Firstly, we note the support of our critical habitat designation, and concur with the reviewers on the importance of considering the vernal pool complexes together with their immediately surrounding upslope areas as the management unit (see *Background and Primary Constituent Elements* sections below). We have used this approach in our analyses when finalizing our critical habitat designation for the Riverside fairy shrimp, and have, wherever possible, included the upslope areas surrounding the pools. Secondly, for approved, legally operative HCPs that include areas eligible for designation as critical habitat and that specifically address the Riverside fairy shrimp and provide for its long-term conservation, we believe that the benefits of excluding those HCPs will outweigh the benefits of including them. Thirdly, we received requests from three military bases to exclude lands owned or managed by the Department of Defense for military purposes because the designation would increase the costs and regulatory requirements, hamper the military's ability to carry out their national security objectives, or because there is an INRMP in place that provides a benefit to the Riverside fairy shrimp.

These installations have either been excluded from final designated critical habitat pursuant to section 4(b)(2) of the Act, or exempted according to section 4(a)(3) of the Act. Please refer to the sections *Relationship of Critical Habitat to Approved Habitat Conservation Plans* and *Relationship of Critical Habitat to Department of Defense Lands* below in this final rule for detailed discussions of our rationale for exclusions and exemptions.

3. *Peer Reviewer Comment:* Any consideration of whether the Riverside fairy shrimp will persist indefinitely (i.e., avoid extinction due to anthropogenic causes) would require a quantification of the Riverside fairy shrimp's (a) dispersal biology, (b) adaptation to local physiochemical conditions, and (c) adaptation to hydrologic uncertainties (via reliance on an egg bank). In terms of the hydrology of the vernal pool habitat, quantifiable data is needed on (d) the historic environmental variation and (e) the predicted future environmental variation. However, only rudimentary data are available on any of these topics, with the possible exception of (d). Therefore, it would be wise to err on the side of caution and offer maximal protection to all remaining populations of this species.

Our Response: We concur that more detailed studies are needed on most aspects of the Riverside fairy shrimp's biology. In this rule, we address the issue of designating critical habitat areas, areas containing the necessary primary constituent elements (PCEs) that are essential to the conservation of the Riverside fairy shrimp. For this purpose, we used the best scientific and commercial information that were available to us and based our analyses upon areas either containing with existing populations of Riverside fairy shrimp or containing features essential for the conservation of the species using the vernal pool complex together with the immediately surrounding upslope areas as our management unit. To assist us in developing this final rule, we also opened two comment periods to obtain as much additional, currently available information as possible.

4. *Peer Reviewer Comment:* One reviewer suggested that the designation of critical habitat is no longer effective as a means to protect the species and its habitat, as funds that are needed to achieve that goal are spent instead on litigation. Rather, a new method is needed to accomplish this goal, such that the Riverside fairy shrimp and its habitat are actually preserved (rather than designated, then litigated).

Our Response: We concur that the Service's present system for designating critical habitat has evolved into a process that is often driven by litigation and the courts, and thus consumes enormous agency resources. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection. Pursuant to section 4 of the Act, however, the Secretary shall, to the maximum extent prudent and determinable, designate any habitat which is then considered to be critical habitat for listed endangered or threatened species. Alternative or additional methods for accomplishing more effective conservation of the Riverside fairy shrimp are discussed in the Recovery Plan, Multiple Species Habitat Conservation Plans (MSHCPs), Natural Community Conservation Programs (NCCPs), and other conservation plans. These plans address the survival and recovery of this species, and we expect they will be in a continual process of improvement and increased efficiency with time.

5. *Peer Reviewer Comment:* Several reviewers disagreed with the Service's statement in the rule (see **SUPPLEMENTARY INFORMATION** above) that designation of critical habitat provides little additional protection to species, and believed this should be amended or omitted from the rule, as it is self-contradictory. Although designating critical habitat does not in itself protect any habitat, the biggest advantage of critical habitat designation is the ability to address the "cumulative effects" of many small impacts to the habitat. Impacts to a single location are not likely to drive the species to extinction, but the effects of impacts at many individual locations may, in total, create a substantial risk for species extinction. Designating critical habitat establishes a core, reducing the potential for individual small impacts to be allowed to drive the species to extinction.

Our Response: While we concur that critical habitat designation can provide some level of species protection by addressing cumulative effects of numerous impacts to the habitat in certain circumstances, this can only be provided if there is Federal nexus for those agencies planning actions that may impact the designated habitat.

6. *Peer Reviewer Comment:* The Service's statement in the rule, that the exclusion of HCPs offers "unhindered, continued ability to seek new partnerships with future HCP participants" (see *Relationship of Critical Habitat to Approved Habitat Conservation Plans*) should be amended

in the rule as it is illogical and self-contradictory. Not designating critical habitat within HCPs in order to allow seeking new partnerships implies that the new partnerships would be compromised if they were actually forced to protect Riverside fairy shrimp habitat, which should be one goal of any "partnership."

Our Response: Both HCPs and critical habitat designations are designed to provide conservation measures to protect the Riverside fairy shrimp. The advantage of seeking new conservation partnerships, through HCPs or other means, is that they can offer active management and other conservation measures for the habitat on a full-time and predictable basis, while a critical habitat designation only prevents adverse modification of the habitat where there is a Federal nexus to the modifying activity, a far lesser level of protection. It is our experience that landowners generally react very negatively to having their property designated as critical habitat, and that this is then a strong disincentive for them to cooperate in conservation of the species in question. HCPs offer conservation of covered species whether or not the area is designated as critical habitat (for details see the section *Relationship of Critical Habitat to Approved Habitat Conservation Plans*).

7. *Peer Reviewer Comment:* The proposed rule appears to find ways to exclude most of the "potential" critical habitat in Riverside and San Diego counties. Except for areas on March Air Reserve Base, the proposed Map Unit 3 for Riverside County excludes all critical habitat, and specifically that on the Santa Rosa Plateau, based on the speculative assertion that the proposed Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) will adequately protect the Riverside fairy shrimp. What is the benefit of excluding critical habitat for the Riverside fairy shrimp on the Santa Rosa Plateau? Any scientifically defensible HCP must protect nearly all of the Santa Rosa Plateau.

Our Response: HCPs and their Implementing Agreements include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species covered in the plans. The Western Riverside County MSHCP, which has now been finalized, seeks to accomplish these goals for the Riverside fairy shrimp through the implementation of species-specific conservation objectives.

In our analyses, the benefits of excluding critical habitat areas covered by the Western Riverside County

MSHCP outweigh the benefits of inclusion. Of the conservation measures this plan identifies for the Riverside fairy shrimp, the first objective is to include within its Conservation Area at least five Core Areas of vernal pools (or vernal pool complexes) and their watersheds; these areas contain five known key Riverside fairy shrimp populations. Core Areas include the Santa Rosa Plateau Ecological Reserve (17,188 acres), Skunk Hollow (156 acres), Murrieta (1,292 acres) and Lake Elsinore back basin (3,180 acres). Within the key population areas, approximately 5,868 acres (33 percent) of potential vernal pool and playa habitat and suitable soils habitat land coverages would be located outside the MSHCP Conservation Area. Any Riverside fairy shrimp present within this area would be subject to incidental take under the guidelines implemented as part of this Plan. Each Reserve Manager responsible for a Core Area containing soils identified as supporting the Riverside fairy shrimp (e.g., the Santa Rosa Plateau Ecological Reserve) shall evaluate their Core Area for the presence of historic or vestigial vernal pools. A program to enhance these areas will be undertaken. Within the MSHCP Conservation Area, that pond water seasonally will be identified and monitored for the presence of fairy shrimp. Reserve managers will ensure habitat support functions within the MSHCP Conservation Area by maintaining and/or preserving watersheds of conserved known or future vernal pools or depressions. Particular management emphasis will be given to disking, illegal dumping and maintaining hydrology (MSHCP Final Documents, Vol. 1—The Plan, June 17, 2003). See *Western Riverside County Multiple Species Habitat Conservation Plan* in the section *Relationship of Critical Habitat to Approved Habitat Conservation Plans* below for more details.

8. *Peer Reviewer Comment:* The Service's assumption that the existence of an HCP automatically affords protection to the Riverside fairy shrimp within the covered area is questionable. In the development of the San Diego Multiple Species Conservation Plan (MSCP)/HCP, vernal pools were explicitly excluded from its intended coverage, because at the time, those areas covered by the conservation plans were regulated as wetlands by the Environmental Protection Agency. As San Diego County does not have a good record of enduring protection of vernal pools, it is important, from a scientific and land-management perspective, to

have an explicit analysis of what (if any) Riverside fairy shrimp populations and their habitats are actually covered in the designated protected areas of the HCP, before exclusion of any areas are made.

Our Response: Vernal pool habitats that support the Riverside fairy shrimp that were considered essential but excluded from critical habitat were included on our website for public review and comment. Of the 1,183 ac (479 ha) of mapped vernal pool habitat within the MSCP planning area, over 847 ac (343 ha) occur within the planning area. The Service has completed a Biological Opinion (June 1997) on the San Diego MSCP, and found that the Plan meets the standards set forth in 50 CFR 17.32(b)(2), and has issued an incidental take permit to the City of San Diego for the 85 species covered in the plan, including the Riverside fairy shrimp. The permit action does not, however, authorize impacts to wetlands or wetland communities; the MSCP assumes a policy of "no net loss" of vernal pools. The permit requires that impacts to vernal pools be avoided; unavoidable impacts will be minimized to the maximum extent practicable and mitigated at a 2:1 or 4:1 ratio to prevent any net loss of vernal pool function and value. In addition to conserving existing vernal pool habitat, the Multiple Habitat Planning Area is expected to conserve 7,745 ac (3,134 ha) of undeveloped areas with clay soils and clay hardpan, and implement management and monitoring measures for vernal pools within the area. In the Biological Opinion issues, the Service has specifically addressed the Riverside fairy shrimp, and emphasized the conservation of the hydrological processes needed for vernal pool functioning. Pursuant to section 4(b)(2), we have excluded lands within legally operative HCPs, including the San Diego MSCP, that address the conservation needs of the Riverside fairy shrimp, if the plans provide assurances that the conservation measures outlined will be implemented and effective. Please see *Relationship of Critical Habitat to Approved Habitat Conservation Plans* section of the rule below.

9. *Peer Reviewer Comment:* Several reviewers stated that the proposed critical habitat designation does not go far enough to provide for the protection of the Riverside fairy shrimp, because significant portions of the species' range were excluded from critical habitat protection. These areas include Department of Defense lands and MSCP/HCP lands. The Riverside fairy shrimp populations in these areas, particularly those on Department of

Defense land, are not protected and are either being lost at present, or vulnerable to loss due to a number of sources and activities, including military maneuvers, crushing by vehicles and toxic poisoning from vehicles or ordnances. In fact, lands under the jurisdiction of HCPs, MSCPs, and the Department of Defense have continued to lose populations of San Diego fairy shrimp (e.g., Cousin's pool, Marine Corps Air Station Miramar) and restoration/creation efforts have thus far not succeeded, and this will likely happen with the Riverside fairy shrimp unless adequate protection is provided for the existing populations. For example, in San Diego County, 66 of 67 vernal pools occupied by the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) have been recently lost in Mira Mesa, an area covered by the San Diego County MSCP. Thus, the benefits of exclusion do not outweigh the benefits of inclusion due to the significantly increased threat to the species survival that exclusion of critical habitat poses to the species.

Our Response: We do not agree with the peer reviewer that excluding critical habitat on lands covered by an HCP or INRMP poses a "significantly increased threat to the species survival." Please refer to the responses to Peer Reviewer Comments 7 and 8 above, and the sections *Relationship of Critical Habitat to Department of Defense Lands* and *Relationship of Critical Habitat to Approved Habitat Conservation Plans* below.

10. *Peer Reviewer Comment:* The small amounts of habitat designated as critical habitat may be questionable. The strip along the international border in the proposed rule (Map Sub-unit 5B, southwestern Otay Mesa) appears to be mitigation or restoration from the Border Infrastructure System. It is not clear that the current hydroperiods are comparable to the pre-impact hydroperiods. Further, it appears that the Department of Homeland Defense drives vehicles through the pools with impunity, without the need for permitted take from the Service. Habitat of such dubious condition is not a suitable substitute for the excluded (but intact) habitat surrounding the proposed areas on western Otay Mesa (critical habitat Map Sub-units 5A, 5B).

Our Response: Please refer to the response to Comment 4-1 below.

11. *Peer Reviewer Comment:* Areas of critical habitat that have been excluded in the proposed rule are under a high level of threat, and local populations of Riverside fairy shrimp in those areas thus face considerable risk of being extirpated, as has happened with

populations of the San Diego fairy shrimp. Currently, there is not enough scientific information on the population genetic structure or life history of the Riverside fairy shrimp to be able to predict the consequences of population losses. Without such data, it is not possible to identify the areas of highest genetic variability, population sources and sinks, levels of gene flow, gene flow distances, evolutionarily significant units or population viability requirements. Loss of critical populations or connections between populations could increase the probability of extinction and put the species as a whole in jeopardy. Thus, it is important that all populations of the Riverside fairy shrimp be included in the critical habitat designation to provide adequate protection of the species as required by the Act.

Our Response: We recognize the current threats facing the Riverside fairy shrimp, the need to minimize fragmentation effects, and to provide adequate conservation protection. However, we did not designate critical habitat for all populations of the Riverside fairy shrimp. Some areas in our proposed designation were not designated as critical habitat for the following reasons: (1) The area did not meet the definition of critical habitat under section 3(5)(A) of the Act, (2) the area is now included within legally operative HCPs, (3) the area was necessary for national security measures, or (4) economic impact costs. However, for some areas which were excluded from critical habitat under section 4(b)(2) of the Act, or exempted under section 4(a)(3) of the Act, the Riverside fairy shrimp still receives protection under conservation plans such as HCPs or INRMPs.

12. *Peer Reviewer Comment:* According to the proposed rule, critical habitat is identified for the Riverside fairy shrimp in six separate units, each of which correspond to the larger Management Areas that support Riverside fairy shrimp occurrences as outlined in the Recovery Plan (Service 1998; 2004). However, the management areas specified in the Recovery Plan for Vernal Pools of Southern California are based on simple geographical locations, not the biology of the species considered, and the Recovery Plan does not include a population viability analysis. Genetic information on the San Diego fairy shrimp has shown that these management areas do not coincide with the species' evolutionarily significant units based on the population genetic structure of the species. The identification of populations essential to the species requires genetic analysis and

life history analysis to determine “source/sink” status and to evaluate the viability of the population and probability of persistence. Simple geographic location is not sufficient, especially considering the amount of loss of intervening habitat. The management areas are therefore not relevant to the species’ conservation, a fact which likely also applies for the Riverside fairy shrimp (Bohonak *et al.* 2003).

Our Response: We agree that no scientific information is available on the genetic diversity of the Riverside fairy shrimp, as is the case for the San Diego fairy shrimp. Thus, we used geographical descriptions to identify critical habitat units. These geographical descriptions are not meant to suggest any evolutionary divergence or population genetic structure. At the same time, we also based our analyses on what areas constituted critical habitat upon the best available scientific and commercial data available to us at the time, and made available public comment periods to allow for submission of any new information.

13. *Peer Reviewer Comment:* The proposed rule stated that an artificial vernal pool complex had been created to offset the impacts to a population of Riverside fairy shrimp by the Redhawk Development, and that another artificial vernal pool creation was planned in order to offset the taking of Riverside fairy shrimp at the Clayton Ranch Pool. Two reviewers questioned whether these artificial pools have produced viable, reproducing populations with positive rates of increase, rather than simply hatching shrimp from the transplanted cysts. To the reviewers’ knowledge, no such successes have been recorded in the primary literature; *i.e.*, see Ripley *et al.* (2004). Furthermore, the proposed rule stated that on Otay Mesa in San Diego County, significant work had been done to restore and enhance vernal pools for listed species, including the Riverside fairy shrimp. However, the reviewers noted that due to failure to check the transplanted cysts, the Otay pools have become “infected” with a “weedy” species, the winter fairy shrimp (*Branchinecta lindahli*), which can hybridize with the San Diego fairy shrimp (Fugate 1998); its effect on the Riverside fairy shrimp is yet unknown. Thus, the restoration or creation efforts have not been verified as successful (producing viable populations and a growing cyst bank) for either San Diego fairy shrimp or Riverside fairy shrimp, and have in fact, introduced new potential threats.

Our Response: We did not designate any artificial vernal pools as critical habitat for the Riverside fairy shrimp.

Public Comments

Issue 1: Policy and Regulations

1–1. *Comment:* It was suggested that all essential Riverside fairy shrimp habitat areas within the boundaries covered by the Western Riverside County Habitat Conservation Plan (HCP), Central/Coastal Orange County Natural Community Conservation Program (NCCP), and San Diego Multiple Species Conservation Plan (MSCP) should be included in the final critical habitat designation because (a) areas within those plans meet the definition of critical habitat; the Service has identified those areas as essential to the conservation of the species, and the plans provide special management for the species, (b) the benefits of inclusion far outweigh the harm wrongly perceived by others, (c) the critical habitat designation provides greater conservation benefits than those contained in the plans, which are inadequate to conserve the Riverside fairy shrimp, (d) because the educational benefits of HCPs are much less than those provided by critical habitat designation, and (e) the critical habitat designation has greater specificity, addressing the needs of specific species, than HCPs. Another commenter suggested that the critical habitat designation should be expanded to include all Riverside fairy shrimp populations, including those in excluded Department of Defense lands or HCP areas. In contrast, one commenter suggested that lands within the Western Riverside County MSHCP do not require additional special management considerations or protection, and thus do not meet definition of “critical habitat.”

Our Response: Although the habitat within the boundaries of these conservation plans contains one or more of the physical and biological characteristics essential to the conservation of the Riverside fairy shrimp, we have determined that these conservation plans provide special management and/or protection for the Riverside fairy shrimp, and we have concluded that the benefits of excluding the lands covered by these plans from the final critical habitat designation outweigh the benefits of including these areas. Thus, we have excluded these areas from critical habitat designation under 4(b)(2) of the Act.

We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of

the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs which address the Riverside fairy shrimp and provide for its long-term conservation. These include the San Diego MSCP in San Diego County, the Western Riverside County MSHCP and the Rancho Bella Vista HCP and Assessment District 161 Sub-regional HCP in Riverside County.

HCPs must meet issuance criteria, according to section 10(a)(1)(B) of the Act, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The take minimization and mitigation measures provided under the above-mentioned HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the Riverside fairy shrimp is not appreciably diminished through direct or indirect alterations. We expect that HCPs undertaken by local jurisdictions (*e.g.*, counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We discuss these standards in detail in the *section 7 Consultation and Relationship of Critical Habitat to Approved Habitat Conservation Plans* portions of this document below).

1–2. *Comment:* It was suggested that the essential Riverside fairy shrimp habitat areas within the boundaries covered by the Western Riverside County HCP should not be excluded as critical habitat because the plan was only recently approved and the protection benefits the plan provided to the species were thus unproven and speculative. According to the Act, the Service cannot base its decisions to exclude areas from its critical habitat designation on unproven conservation activities.

Our Response: Under section 4(b)(2), we may exclude any area from critical habitat if we determine that the benefits of such an exclusion outweigh the benefits of including the area in the critical habitat designation, unless, based on the best scientific and commercial data available, we determine that failure to designate the area as critical habitat will result in the extinction of the species. We have excluded the areas within the Western Riverside County MSHCP from the final critical habitat designation under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion. (For a detailed discussion please see the section *Relationship of Critical Habitat to Approved Habitat Conservation Plans* below).

1–3. *Comment:* Several comments were made that the Service inaccurately overstates the benefits of conservation plans while overemphasizing possible harm of critical habitat designation within plans' boundaries, that the Service cannot rest any claim of harm on mere perceptions; possible complaints by plan participants would suggest intention of significantly reduced conservation compared to those in a designated critical habitat. Critical habitat designation of an area after the approval of an HCP there will not serve as disincentive, but actually encourage HCP preparation.

In an opposing view, one commenter supported the exclusion of critical habitat within the Western Riverside County MSHCP, asserting that if it were included, it would undermine cooperative conservation partnerships. Two commenters stated, in general, that all lands covered by an HCP (e.g., NCCPs/ special area management plans) should be automatically excluded from critical habitat designation upon approval of the respective conservation or management plan.

Our Response: It is our experience that most landowners strongly object to inclusion of their lands within critical habitat; thus while proposing a designation may in some cases provide an incentive to participate in developing an HCP, we have no indication that designating private lands as critical habitat encourages the owners to engage in conservation activities. We do recognize that the designation of critical habitat does not provide the same set of conservation conditions that an HCP does, and an HCP may well provide more benefits to the species than critical habitat designation. We recognize that critical habitat is only one of many conservation tools for federally listed species, but HCPs are one of the most

important tools for reconciling land use with the conservation of listed species on non-Federal lands. Furthermore, the benefits of including HCPs or NCCP/HCPs in the critical habitat designation are normally small; i.e., any federally funded or authorized activities in such habitat that may affect critical habitat would require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, we believe that this benefit is small or non-existent. Although conservation plans are important tools to ensure the species survival and recovery, our actions regarding newly implemented plans are not automatic; it is our policy to carefully review each plan, and only exclude areas from critical habitat designations consistent with section 4(b)(2) of the Act.

1–4. *Comment:* All essential habitats within the boundaries of the Central/Coastal Orange County NCCP/HCP should be included in the critical habitat designation because the Riverside fairy shrimp in natural vernal pools is not covered by these plans, and therefore cannot benefit from the conservation measures in the plan.

Our Response: The Riverside fairy shrimp is known to occur in only two areas within the Central-Coastal Orange County NCCP/HCP, which provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 Federal or State listed, unlisted, and sensitive species. Within this NCCP/HCP, we proposed critical habitat at the former Marine Corps Air Station (MCAS) El Toro but we excluded this area pursuant to section 4(b)(2) for economic impacts. We excluded an area within the Edison Viejo Conservation Bank, as their management plan meets our criteria for conservation measure for the species. The Riverside fairy shrimp is also known to occur in the North Ranch Policy Plan area which was originally not included within the Central-Coastal NCCP/HCP. However, in 2002, the Irvine Company, owner of lands within the North Ranch Policy Plan area, granted a conservation easement to The Nature Conservancy over the portion of the land where this vernal pool is located, and provided a \$10 million management endowment. The conservation easement and management endowment ensure conservation of the Riverside fairy shrimp at this site. (For details, see *Relationship of Critical Habitat to Approved Habitat Conservation Plans* below).

1–5. *Comment:* The critical habitat designation does not give landowners effective notice as to whether their property contains critical habitat, causing a burden to landowners who must determine which portions of their land contain critical habitat.

Our Response: We identified, as critical habitat, specific areas in the proposed determination that are referenced by UTM coordinates found on standard topographic maps. Note that areas delineated as critical habitat on the maps do not include developed areas within the boundaries that do not contain more than one of the primary constituent elements for the species. During the public comment periods, we also made available the proposed critical habitat units, superimposed on 7.5 minute topographic maps and spot imagery, for inspection by the public at the Carlsbad Fish and Wildlife Office. Furthermore, we distributed geographic data and maps of the proposed critical habitat to all individuals, organizations, local jurisdictions and State and Federal agencies that requested them. We believe the information made available to the public is sufficiently detailed to allow for determination of critical habitat boundaries. This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). The accompanying maps are for illustration purposes only. If additional clarification is necessary, contact the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009 (telephone 760/431-9440).

1–6. *Comment:* Essential Riverside fairy shrimp habitat within MCAS Miramar should be included as critical habitat because the habitat under their Integrated Natural Resource Management Plan (INRMP) meets the definition of critical habitat, as the Service has identified those areas as essential to conservation of species and the plan provides special management for the species. Further, the current INRMP (a) does not provide details for any existing or future exotic control project and thus does not provide adequate protection against current threats posed by the spread of exotic plants, (b) contains mainly future plans and few active measures addressing current conservation needs, and little information on when and where the actions will be accomplished, (c) does not include the Navy's past Miramar Vernal Pool Management Plan, i.e., treatment of vernal pools is not mandated, (d) its protection measures are not permanent, i.e., its reference to "political developments" could be seen as future decision to convert base to a

regional airport or other development; (e) identifies the NEPA and the Clean Water Act as primary mechanisms for reconciling land uses with conservation, but these do not provide effective conservation of vernal pools, and (f) the INRMP provides few benefits, as the INRMP and past consultations will not ensure conservation or protection of Riverside fairy shrimp and its essential habitat.

Our Response: Under section 4(a)(3) of the Act, we must exempt military lands subject to an INRMP from critical habitat if that plan provides a benefit to Riverside fairy shrimp. The lands at MCAS Miramar are covered by an approved INRMP that identifies sensitive natural resources within management areas that have various resource conservation requirements and management concerns. These areas have been assigned five levels of conservation priority corresponding with their sensitivity, with *e.g.*, Level I management areas receiving the highest proactive measures. MCAS Miramar continues to monitor, restore and manage its vernal pool resources, including studies in progress, and has indicated it has no plans for changes in future land use. MCAS Miramar has completed an INRMP which we have reviewed and determined that it provides benefits to the Riverside fairy shrimp. Therefore, lands at MCAS Miramar have not been included in the proposed or final designation in accordance with 4(a)(3) of the Act (for more details, see benefits analysis in proposed rule (69 FR 23024) under *Relationship of Critical Habitat to Department of Defense Lands; Marine Corps Air Station Miramar*).

1-7. *Comment:* The Service did not provide for adequate public notice of the proposed rule and sufficient opportunity for public comment. Additionally, requests for extension of the comment period were denied, while previous comments have not been acted upon. The 30-day comment period on the draft economic analysis lacks compliance with the required 60-day comment period per the Service's own regulations, the Act and the Regulatory Flexibility Act; with a shorter comment period.

Our Response: Pursuant to our implementing regulations at 50 CFR 424.16, we are required to provide for at least 60-days for public comment following the publication of a proposed rule in the **Federal Register**. We published the proposed rule to designate critical habitat for the Riverside fairy shrimp in the **Federal Register** on April 27, 2004 (69 FR 23024), and accepted comments from

the public for 30 days, to May 27, 2004. We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment on the proposed rule. In addition, we published notices in the San Diego Union Tribune, the Orange County Register, and the Los Angeles Times, all on May 6, 2004. We published a second notice in the **Federal Register** on October 19, 2004 (69 FR 61461), announcing the availability of the draft economic analysis and opening a 30-day public comment period until November 18, 2004, to allow for comments on the draft economic analysis and additional comments on the proposed determination. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to relevant elected officials, local jurisdictions, and interest groups. Following its release, we also published the draft economic analysis and associated material on our Web site (<http://carlsbad.fws.gov>). We believe these two public comment periods provided adequate opportunity for public comment and constitute compliance with our implementing regulations at 50 CFR 424.16. Because of the court-ordered time frame, we were not able to extend the second comment period or open an additional public comment period.

1-8. *Comment:* Would the designation of critical habitat for the Riverside fairy shrimp be considered a changed or unforeseen circumstance with respect to the various sub-area HCPs presently approved or pending?

Our Response: In this rule, no critical habitat was designated within lands covered by any pending or un-approved HCP.

1-9. *Comment:* One commenter stated that the proposal to designate critical habitat violates the Act because of (a) failure to use the best available science to exclude non-essential lands from the critical habitat designation, (b) failure to determine whether any specific areas may require special management considerations or protection, (c) it does not contain an economic impact analysis; Congress intended that the Service consider economic and other impacts of the critical habitat designation concurrently with the formulation of critical habitat proposals, (d) certification pursuant to the Regulatory Flexibility Act impermissibly relies on the as-yet unavailable economic analysis, reducing ability of public to provide meaningful comment, and because (e) the Service has failed to comply with NEPA prior to designating critical habitat.

Our Response: We are directed by the Act to use the best commercial and scientific information available to us at the time we conduct our analyses. In response to part (a), we relied on the best scientific resources when determining to either designate areas essential to the conservation of the Riverside fairy shrimp and to exclude other areas from our final critical habitat designation. Our final delineation of critical habitat is based on the best available scientific and commercial data regarding the species, including a compilation of data from peer-reviewed published scientific literature, unpublished or non-peer-reviewed survey or research reports, and statements from expert biologists knowledgeable about the Riverside fairy shrimp and its habitat. In addition to the above information available to us, we also requested additional information from the public and from peer reviewers to further assist us in our analyses. All new information that was provided during the public comment periods was considered in this final designation, as appropriate. The areas designated as critical habitat represents our best estimate of what areas are essential and critical for the conservation of the species. In response to part (b), please refer to our section *Relationship of Critical Habitat to Approved Habitat Conservation Plans* for details on our analyses of approved conservation plans. In response to comments (c) and (d), we have provided a draft economic analysis, available for public review during the second comment period, giving individuals opportunity to submit comments on its contents, which we have reviewed and addressed in this rule. In response to comment (e), we are not required to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. (For more details, see *National Environmental Policy Act (NEPA)* below).

1-10. *Comment:* Would on-going activities (such as routine inspections, road grading, construction, etc.) that occur adjacent to designated critical habitat be considered to appreciably decrease habitat values or quality through indirect effects?

Our Response: The Federal agency planning to conduct such activities must determine if their proposed action may affect critical habitat designated for the Riverside fairy shrimp. The action agency determines whether their action(s) "may affect" the Riverside fairy shrimp or its primary constituent elements within the adjacent critical habitat based on their analyses. If so, the

action agency would enter into consultation with the Service under section 7.

1–11. *Comment:* Can the Service exclude all areas addressed under existing section 7 permits in a manner similar to the exclusions for areas covered under existing section 10 permits? Specifically, can an existing section 7 permit based on a biological opinion for the California gnatcatcher be amended to cover the Riverside fairy shrimp critical habitat in the Otay Mesa area? Specifically, this would be necessary for ongoing operations and maintenance by the San Diego County Water Authority of the Mexico Emergency Connection Pipeline on the western portion of Otay Mesa (final Map Unit 4).

Our Response: Consultation under section 7 of the Act does not result in the issuance of a section 7 “permit” per se. Federal actions that we conclude are not likely to jeopardize the continued existence of a listed species are exempted from the prohibition against take of listed animal species under section 9 of the Act so long as the Federal agency and any permittee comply with the terms and conditions of the incidental take statement accompanying the Service’s biological opinion. Assuming the Federal agency that was subject to consultation under section 7 of the Act for a listed species still retains discretionary jurisdiction over the action, the Federal agency must re-initiate section 7 consultation if its action “may affect” designated critical habitat for the Riverside fairy shrimp. See *Section 7 Consultation* below.

1–12. *Comment:* One commenter requested that the Major and Minor Amendment areas of the eastern portion of Otay Mesa, southern San Diego region (Map Unit 5C), be excluded from the critical habitat designation because these areas must conform to the MSCP, sub-area plans, and the resource protection ordinance, and a critical habitat designation would result in additional section 7 requirements, economic burdens on HCP participants, discourage HCP development, cause additional regulatory review that could jeopardize ongoing conservation efforts, possibly encourage legal challenges to the HCPs because of the uncertainty of the “adverse modification” threshold, and afford no additional benefit to the species because HCPs provide better long-term conservation measures.

Our Response: Although the Major/Minor Amendment areas are within the boundaries of the San Diego MSCP, these areas are not covered by completed plans that address the conservation of the Riverside fairy

shrimp. While we have excluded lands covered by approved sub-area plans under the MSCP, the plans for the Major/Minor Amendment areas are incomplete and thus do not provide adequate conservation measures addressing the Riverside fairy shrimp. However, we have excluded all of Sub-unit 5C in private ownership within the Otay Mesa Major/Minor Amendment areas, under section 4(b)(2) of the Act, in order to avoid some or all of the additional costs incurred by affected landowners.

1–13. *Comment:* One commenter suggested that the areas proposed as Riverside Fairy Shrimp critical habitat (a) do not need special protection or satisfy the definition of critical habitat because they receive substantial protections under new regulations (*i.e.*, Clean Water Act, Porter-Cologne Water Quality Control Act, California Environmental Quality Act, California Department of Fish and Game permitting codes, State Water Board regulations; and (b) must be re-evaluated to determine whether the habitat requires special protection in light of new regulations governing such areas, *i.e.*, the California Porter-Cologne Water Quality Control Act.

Our Response: While the statutes listed above may provide some regulatory protection for the Riverside fairy shrimp and its associated essential habitat, they do not provide assured management for the species.

Therefore, exclusion of essential habitat from this designation on the basis of the regulatory protections potentially afforded by these statutes is not warranted.

1–14. *Comment:* One commenter asserted that Service has unlawfully pre-determined that exclusion from the final critical habitat designation of essential Riverside fairy shrimp habitat that lies within other conservation plan areas outweighs any benefits of inclusion because the acknowledged essential habitat was excluded prior to the public’s review of the Service’s analyses of benefits and harm.

Our Response: Notice of our intent to exclude lands within approved and/or pending HCPs was provided to the public, and maps showing the lands proposed for exclusion were readily available to the public for inspection during the two public comment periods. We solicited comments from the public for 30 days about the areas which we proposed to include or exclude from the proposed rule to designate critical habitat for the Riverside fairy shrimp on April 27, 2004 (69 FR 23024). In the **Federal Register** notice, we notified the public that we may revise the critical

habitat designation if additional information becomes available that changes our assessment of the relative benefits of including or excluding these areas from critical habitat. We also contacted appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment on the proposed rule, and published notices in the San Diego Union Tribune, Orange County Register, and Los Angeles Times on May 6, 2004. We published a second notice on October 19, 2004 (69 FR 61461), announcing the availability of the draft economic analysis and opening a 30-day public comment period until November 18, 2004, and also published the draft economic analysis and associated material on our Web site (<http://carlsbad.fws.gov>). In making our final critical habitat determination, we considered every comment submitted.

Issue 2: Adequacy and Extent of Critical Habitat Designation

2–1. *Comment:* One commenter stated that there is no substantiation for an increase in area designated as critical habitat from the previous critical habitat rule issued on May 30, 2001 (66 FR 29384).

Our Response: In the May 30, 2001, final critical habitat rule for the Riverside fairy shrimp (66 FR 29384), we designated approximately 6,870 ac (2,790 ha) as critical habitat. Since then, additional, new information on vernal pools and the occurrences of the little-studied Riverside fairy shrimp has become available, while on the other hand, numerous of the discovered essential areas have been included in several regional HCPs or INRMPs. Thus, on April 27, 2004, we proposed to designate approximately 5,795 ac (2,345 ha) of vernal pools and their adjacent watersheds essential to the conservation of the species as critical habitat for the Riverside fairy shrimp (69 FR 23024). This final determination designates 306 ac (124 ha) as critical habitat, which represents less than five percent of the area originally designated as critical habitat in the previous rule of 2001.

2–2. *Comment:* One commenter stated that the Service did not use an appropriate mapping scale for this species, and since the species’ range is well known in San Diego County, the Service should have been able to delineate critical habitat boundaries with extreme precision. The current 100 m² blocks include areas that do not have the PCEs for the Riverside fairy shrimp, and those areas should be excluded. Another commenter asked whether the Service intends to exclude from the designated critical habitat all existing

roads, aqueducts, etc. regardless of the state of these features.

Our Response: We are required to define and delimit critical habitat by specific limits using reference points and lines as found on standard topographic maps of the area" (50 CFR 424.12(c)). We have delimited the boundaries of critical habitat boundaries in this rule based on a minimum mapping scale of 100 m. This mapping scale was based on the availability and accuracy of aerial photography and GIS data layers used to develop the designation. In drawing our critical habitat boundaries for the proposed and final rules, we have attempted to exclude all areas that do not contain essential habitat for the Riverside fairy shrimp as defined by its PCEs. Based on information obtained through public comments and updated imagery and GIS data layers, we have been able to further refine the boundaries of critical habitat during the development of this final rule. Within the limitations of our mapping scale, we have been able to exclude most, but not all areas, that do not contain the PCEs, including some man-made features. Note, however, that we have determined that existing man-made features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas are not likely to contain one or more of the PCEs and thus do not constitute critical habitat and the lands on which they are found. Activities in these areas are unlikely to affect PCEs (*i.e.*, essential habitat for the Riverside fairy shrimp), and therefore, consultation under section 7 of the Act would not be required unless such activities would affect the species or adjacent critical habitat. In making the critical habitat designation, we used the best scientific and commercial information available to us, including information obtained during the two public comment periods.

2–3. *Comment:* The proposed critical habitat designation violates the Act because of the Service's failure to limit the designation to areas essential to the conservation of the Riverside fairy shrimp.

Our Response: In proposing critical habitat designation, we used the best scientific and commercial information available to determine those areas essential for the conservation of the Riverside fairy shrimp. We used additional information available to us, including a more detailed aerial imagery, a finer mapping grid (changed from 250 m² to 100 m²), as well as information provided by commenters to refine our mapping of all essential habitat included in the final

designation. Please see the sections *Background, Criteria Used to Identify Critical Habitat, and Critical Habitat Designation* of this rule for further discussions on how we determined habitat that is essential to the conservation of the species. The areas designated by this final rule are limited to lands essential for the conservation of the Riverside fairy shrimp.

2–4. *Comment:* Rancho Mission Viejo stated that in the proposed rule: (a) The Service used a "recovery standard" which resulted in an overly broad critical habitat designation, (b) the Service did not provide scientific data to indicate how it determined the extent of watersheds that comprise the extent of critical habitat within Rancho Mission Viejo, and that (c) one vernal pool (within Map Unit 2), included in the proposed designation, no longer exists.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes "(i) specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary". In designating critical habitat for the Riverside fairy shrimp, we identified those areas that are essential to the conservation of this species. The areas we designate as critical habitat provide one or more of those habitat components essential for conservation of the Riverside fairy shrimp. In this final rule, we have not included all areas currently occupied by the Riverside fairy shrimp, but instead have designated those areas that are essential for the conservation of the species and that may possess large populations, have unique ecological characteristics, and/or represent the known historic geographic areas where the Riverside fairy shrimp can be re-established. The Recovery Plan (Service 1998) details some measures to meet the recovery needs of the Riverside fairy shrimp, and provides a description of habitat attributes that are essential to conservation of the species. We believe

that we used the best scientific and commercial information available in determining those areas essential for the Riverside fairy shrimp that were proposed as critical habitat and subsequently finalized. Please see the sections *Background, Criteria Used to Identify Critical Habitat, and Critical Habitat Designation* of this rule for further discussion on how we determined habitat that is essential to the conservation of the Riverside fairy shrimp.

Issue 3: Biological Justification and Methodology

3–1. *Comment:* There is insufficient data to show that the Riverside fairy shrimp is present in the proposed critical habitat areas at March Air Reserve Base (March ARB). Further, the Service did not use best scientific data available in the proposed critical habitat designation, as it did not consider the "1998 Fairy Shrimp Surveys at March Air Reserve Base, Riverside County, California" (RECON Number 2965B, September 14, 1998) which concluded that "potential habitats at March Air Reserve Base are of poor quality and do not support the Riverside fairy shrimp." Because the surveys indicated that the habitat was unoccupied, the pools on March ARB are not essential to the conservation of the species.

Our Response: The delineation of critical habitat for the Riverside fairy shrimp was based on the best available scientific and commercial data regarding the species. During both public comment periods, all new information provided was considered in this final designation, as appropriate. The areas proposed and designated as critical habitat, as described, represent our best estimate of what areas are essential and critical for the conservation of the species. Critical habitat at March ARB was excluded from critical habitat based on section 4(b)(2) of the Act.

Issue 4: Comments on Individual Map Units—Exclusions

4–1. *Comment:* The U.S. Department of Homeland Security (DHS), U.S. Border Patrol, San Diego Sector, submitted comments (May 27, 2004) raising the following issues: (1) Lands owned by the DHS within Sub-units 5B and 5C have previously been disturbed and developed by the construction of the Border Infrastructure System (BIS), (2) the DHS has conducted two restoration projects to offset losses for fairy shrimp, and 135 ac (55 ha) of DHS-owned lands located north of the BIS have been designated as mitigation for completion of the border system and

should not be designated as critical habitat. DHS has made a commitment to the Service to transfer these lands to a conservation resource agency and/or to protect and conserve the lands in perpetuity, (3) lands within the footprint of the BIS do not or will not contain any of the primary constituent elements for the Riverside fairy shrimp once construction is completed, and (4) the BIS is considered integral to national security.

Our Response: We have excluded essential habitat within DHS-owned lands along the U.S.-Mexico border (*i.e.*, all of Sub-unit 5B, and portions of Sub-unit 5C) under section 4(b)(2) of the Act and removed non-essential areas. The concerns related to the presence or absence of primary constituent elements within the footprint of the BIS are moot because no lands owned by the DHS have been designated as critical habitat. For a detailed explanation, please see the section *Application of Section 4(b)(2) to Department of Homeland Security (DHS) lands* below.

4-2. *Comment:* March ARB requested that vernal pools located on their lands be excluded from critical habitat under section 4(b)(2) of the Act because designation would adversely impact commercial reuse of former military property currently under development, severely limit civilian aviation at the joint-use March ARB airport, result in aviation delays, jeopardize public safety and impact firefighting mission of California Department of Forestry, increase possible risk of bird-aircraft strikes, and "adversely impact mission execution and military training critical to national security." One pool is located near the airfield zone where ongoing maintenance is necessary to ensure proper drainage and prevent possible runway damage. Further, they suggested that the vernal pools on March ARB (called Pools 3 and 6 by March ARB) do not meet the definition of "critical habitat," suitable habitat for the Riverside fairy shrimp is not present or determinable and cannot be maintained on March ARB, and the pools are not essential to the conservation of the species as required by Act. Thus, the benefits of exclusion outweigh benefits of inclusion, will not result in extinction of the Riverside fairy shrimp, and the proposed critical habitat designation is not prudent. The Air Force's Environmental Impact Analysis Process ensures the compliance of March ARB with the NEPA, and also, an INRMP is being revised that will ensure all potential habitat areas on March ARB will be investigated for Riverside fairy shrimp.

Our Response: We have determined to: (1) Remove Sub-unit 3A from this critical habitat designation as the area has been modified and no longer contains the primary constituent elements for the Riverside fairy shrimp, and (2) exclude Sub-unit 3B from this final critical habitat designation according to section 4(b)(2) of the Act. The main benefit of the latter exclusion is to ensure that mission-critical military flight activities can continue without interruption at March ARB while their INRMP is being completed. Under section 4(b)(2) of the Act, we may exclude lands from critical habitat if the benefits of excluding them, including the benefits to national security, outweigh the benefits of including them in the designation. We have determined that the benefits to national security of excluding lands within Sub-unit 3B from critical habitat outweighs the benefits of including these lands in the critical habitat designation (*see Application of Section 4(b)(2) to March Air Reserve Base (March ARB)* for a detailed discussion).

4-3. *Comment:* We received comment letters from the Federal Aviation Administration (FAA) and Los Angeles World Airports (LAWA; Sapphos Environmental 2004) regarding the proposed designation of critical habitat at the Los Angeles International Airport (Sub-units 2A and 2B). FAA and LAWA questioned the appropriateness of the proposed designation of critical habitat because of past decisions by the Service in the Recovery Plan for Vernal Pools in Southern California, previous designation of critical habitat for the Riverside fairy shrimp, the April 2004 biological opinion for the Los Angeles International Airport Master Plan, concern for the potential increased risk to public safety and air navigation, and conflicts with FAA's mission. These agencies also recommended that critical habitat not be designated within the Los Angeles International Airport because of the ongoing section 7 consultations for the Riverside fairy shrimp with FAA and LAWA for their operations and maintenance activities and the absence of the primary constituent elements for the Riverside fairy shrimp within the proposed critical habitat units.

Our Response: In the proposed rule, we identified vernal pools at the Los Angeles International Airport (LAX) as critical habitat (Sub-units 2A, 2B). As a result of the ongoing operations and maintenance activities at LAX, the requirement of the primary constituent element related to the length of time that ponding seasonally occurs within these ephemeral wetlands is not met. Thus, these ephemeral wetlands do not

contain this primary constituent element; the Riverside fairy shrimp is unable to complete its lifecycle at LAX without these pools being inundated for a minimum of two months. Thus, we conclude that the ephemeral pools originally proposed as critical habitat at LAX are not essential for the conservation of the Riverside fairy shrimp and we are not designating them as critical habitat.

4-4. *Comment:* The U.S. Marine Corps has requested the exclusion of lands on Marine Corps Base (MCB) Camp Pendleton from critical habitat designation per the Act, under section 4(a)(3) and section 4(b)(2). They stated that MCB Camp Pendleton has an INRMP that provides significant direct and indirect benefits to the Riverside fairy shrimp, that section 7 provides sufficient protection for the Cocklebur Sensitive Area as described in a previous biological opinion (1-1-82-I-92) and therefore, this area should be excluded from critical habitat. They stated that designation would interfere with the base's critical military training mission and military readiness and concurred with the Service's proposal to exclude mission-critical areas from critical habitat designation.

Our Response: According to section 4(a)(3) of the Act, we must exempt Department of Defense lands covered by an INRMP from the critical habitat designation if we determine that the INRMP provides a benefit to the Riverside fairy shrimp. We have reviewed Camp Pendleton's INRMP and conclude that their plan provide a benefit to the Riverside fairy shrimp. With the INRMP in place and progress being made towards improving the protection of Riverside fairy shrimp, we have therefore exempted MCB Camp Pendleton under section 4(a)(3) of the Act. *See the Exclusion of Critical Habitat Under Sections 4(a)(3), 3(5)(A) and 4(b)(2) of the Act* section below for further discussion of lands excluded from critical habitat.

4-5. *Comment:* We received a request to exclude areas owned by San Diego Gas and Electric (SDG&E) that fall within their sub-regional NCCP/HCP boundaries from the critical habitat designation because these areas do not meet definition of critical habitat (*i.e.*, is covered by an HCP plan) and exclusion will not pose any potential risk to the Riverside fairy shrimp. Designation of critical habitat imposes economic burdens on HCP participants, increases the cost of consultation, increases delay, imposes additional regulatory review, and will reduce incentive to participate in the HCP process. HCPs provide a much greater conservation benefit to

private land areas than other Endangered Species Act programs, while critical habitat designation affords no additional benefits to the species as section 7 is applied on an inconsistent and sporadic basis, and does not provide long-term protection.

Our Response: Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 of the Act. We made a determination as to whether modifications to the proposal were appropriate. We reviewed the maps to ensure that only those lands essential for the conservation of the Riverside fairy shrimp were designated as critical habitat. We excluded lands from the final designation that we determined to be non-essential to the species' conservation. We also excluded lands, including lands identified in the Vernal Pool Recovery Plan that were included in an approved HCP which provides for the conservation of Riverside fairy shrimp, and where we determined that the benefits of excluding those areas outweighed the benefits of including them. We included lands in the final designation that are essential to the conservation of the species which may require special management considerations or protection for the Riverside fairy shrimp. Portions of essential habitat areas within the SDG&E Sub-regional Plan which are used for SDG&E operational maintenance activities have been excluded from critical habitat based on section 4(b)(2) of the Act. This sub-regional plan and the clarification document (July 2004) defines avoidance, minimization, and offsetting measures to be implemented by SDG&E for the operations and maintenance activities and future construction of new facilities and roads.

4–6. *Comment:* Skyline Ranch suggested that lands owned by Pardee Homes be removed from critical habitat designation because it does not fit critical habitat designation, and is not within the geographical area occupied by the species. The commenter stated that: (a) The Service has no proof showing Cruzan Mesa pools in Skyline Ranch property are occupied; attached information referred to two surveys conducted in 2002 and 2003 that recorded the vernal pool fairy shrimp (*Branchinecta lynchi*), but did not record Riverside fairy shrimp on Cruzan Mesa; (b) because the Service has not made a finding that the site is essential to the species, and Skyline Ranch does not need special management or

protection, the site cannot be designated critical habitat; (c) the area that has been proposed as critical habitat (536 ac) exceeds the area that contains the PCEs. Pardee Homes engaged Sikand Engineering, whose hydrological model determined that the maximum surface area of the two main pools was 12 ac (5 ha) and the tributary area necessary to fill the pool volumes from rainfall runoff constituted 90 ac (36 ha), totaling 102 ac (41 ha), and (d) the benefits of excluding outweigh the benefits of including lands within Skyline Ranch as critical habitat; exclusion would not lead to the extinction of the species. The commenter listed the benefits of exclusion from critical habitat designation as the implementation of Pardee plans to construct approximately 1,344 single family detached homes on the property, creation of new jobs and tax revenues for local jurisdictions, and the removal of burden of substantial impending litigation to Skyline Ranch property by "No Growth" advocates.

Our Response: Cruzan Mesa (proposed Map Sub-unit 1C), constitutes a portion of a larger area of Pardee-owned property (Skyline Ranch). Cruzan Mesa contains several isolated vernal pool complexes within a unique topography, *i.e.*, a topographically enclosed basin atop a large, elevated mesa (1,230 ft (375 m)) on an eroded foothill. In 2004, the Los Angeles County Department of Regional Planning proposed to designate a 958 ac area Sensitive Ecological Area (SEA), including all of Cruzan Mesa, due to its regional biological values. In evaluating the Cruzan Mesa sub-unit, we relied upon various sources, including information in the Final Recovery Plan for Vernal Pools of Southern California (Service 1998) and the Biological Resources Assessment Report of the Proposed Cruzan Mesa Vernal Pools SEA prepared for the Los Angeles County Department of Regional Planning (PCR Services 2000). This information referenced the occurrence of Riverside fairy shrimp at Cruzan Mesa. Information from the referenced comment letter refers to another survey of some vernal pools on Cruzan Mesa that did not encounter Riverside fairy shrimp. However, we have not designated critical habitat on Cruzan Mesa for the Riverside fairy shrimp because at present, we do not have sufficient documentation supporting the occurrence or non-occurrence of the Riverside fairy shrimp in the Cruzan Mesa vernal pools. Thus, we have concluded that Cruzan Mesa is not essential for the Riverside fairy shrimp.

4–7. *Comment:* San Diego County Water Authority, citing undue increased

regulatory burden, costs, and administrative delays that would be caused by a critical habitat designation, requested that their facilities (the Mexico Emergency Connection Pipeline) on Otay Mesa (Sub-unit 5C) be excluded or, alternatively, that provisions be made in the designation to address the existing activities and operations within their right-of-way, through either exclusions or textual exemptions.

Our Response: Please see the response to comment 1–10 above and discussion in *Section 7 Consultation*, below. Please note that critical habitat within Sub-unit 5C has been excluded based on section 4(b)(2) of the Act.

4–8. *Comment:* One commenter stated that critical habitat designation should exclude Rancho Mission Viejo lands (within Map Sub-units 2F and 2G) "in light of disincentives to continued participation in conservation planning," because of a pending HCP, and because the benefits of exclusion outweigh benefits of inclusion.

Our Response: We are continuing to work with Rancho Mission Viejo to complete their HCP (please see *Relationship of Critical Habitat to HCPs in Development* section below). The South Orange County NCCP/HCP covers approximately 128,000 ac (51,799 ha) of land within the plan area and has been in development for a number of years. This NCCP/HCP planning effort includes the participation of Rancho Mission Viejo and the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano and San Clemente, and the County of Orange. However, the Environmental Impact Statement and Environmental Impact Report for the NCCP/HCP proposal have not been released for public review and comment. There are altogether at least four vernal pools that support the Riverside fairy shrimp within the study area of the South Orange County NCCP/HCP (please see *Critical Habitat Designation* below for more information). The features within these pools have been determined to be essential to the conservation of the species and may require special management consideration or protections. Please note that critical habitat within these subunits has been excluded based on section 4(b)(2) of the Act.

4–9. *Comment:* The vernal pool on the former MCAS El Toro does not have the PCEs to support the Riverside fairy shrimp and further, critical habitat designation at El Toro would impede the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response actions

necessary to remediate both soil and groundwater contamination on the property. Thus, the benefits of excluding the pool at El Toro from the critical habitat designation outweigh the benefits of including it.

Our Response: We have reviewed the available information and believe that the vernal pool at former MCAS El Toro has the primary constituent elements for the Riverside fairy shrimp. We have excluded all of Unit 2C, consisting of lands within the former MCAS El Toro from critical habitat based on section 4(b)(2) of the Act.

Issue 5: Comments on Individual Map Units—Inclusions

5-1. *Comment:* One group and the City of Moorpark requested the inclusion of areas containing vernal pools within Map Unit 1 in the final critical habitat designation as it will help ensure the protection of the habitat and the species. In addition, clarification was given that (a) the vernal pool located on the former Carlsberg Ranch is on part of a land parcel (650,000 ac) owned and managed by the Santa Monica Nature Conservancy, and (b) Sub-units 1A and 1B include portions of land within the Tierra Rejada Greenbelt, an area of land with formal agreement by the Cities of Moorpark, Thousand Oaks, Simi Valley, and the County of Ventura to be preserved for open space and agricultural uses.

Our Response: This area is included in our final critical habitat designation, and we have amended our records to include the ownership and land usages information.

5-2. *Comment:* A number of requests were made that additional areas be included in the critical habitat designation because critical habitat provides significant conservation benefits to listed species, is an essential tool for species recovery, it mandates higher habitat conservation standards not otherwise available to the species, provides detailed, practical guidance on locations of areas essential to the species' survival, and also carries a very valuable, practical educational value. It was also requested that the vernal pools identified in Appendices F and G of the Service's Recovery Plan for Vernal Pools of Southern California be included because they are essential to conservation of the species and in need of special management.

Our Response: The Recovery Plan for the Vernal Pools of Southern California (Service 1998), discusses vernal pool complexes and pools, their distribution, and known occupancy by federally listed species at the time of the plan's

publication. Not all vernal pools discussed in the plan are known to be occupied by the Riverside fairy shrimp, or considered to be essential to the conservation of the Riverside fairy shrimp. Only those vernal pool habitats that are essential to the conservation of Riverside fairy shrimp were included in the critical habitat designation for the Riverside fairy shrimp. Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 of the Act. We made a determination as to whether modifications to the proposal were appropriate. We reviewed the maps to ensure that only those lands essential for the conservation of the Riverside fairy shrimp were designated as critical habitat. We removed lands from the final designation that we determined to be non-essential to the species' conservation. We also excluded lands, including those identified in the Vernal Pool Recovery Plan, that were located within an approved HCP, which provides for the conservation of Riverside fairy shrimp, and where we determined that the benefits of excluding those areas outweighed the benefits of including them, or an INRMP which provided a benefit to the species. We included lands in the final designation that are essential to the conservation of the species which may require special management considerations or protection for the Riverside fairy shrimp.

5-3. *Comment:* All essential Riverside fairy shrimp habitat within MCB Camp Pendleton should be included in the critical habitat designation because (a) Service has failed to state how benefits of exclusion outweigh benefits of designation, especially in light of the Act's exemptions that would allow otherwise incompatible military training activities; (b) inclusion will not limit or additionally impact military training and readiness at the base; existing requirements of uplands consultation at MCB Camp Pendleton will ensure the avoidance of adverse impacts to the Riverside fairy shrimp and involve section 7 consultations; thus little benefit of exclusion, (c) it has the benefit of providing the military with clear, independent scientific regulatory guidance on location of critical habitats for the Riverside fairy shrimp and other endangered species, and (d) the benefits of inclusion outweigh any costs of inclusion.

Our Response: Please see our responses to *Peer Reviewer Comment 2* and to *Comment 4-4* above, and the

section below on *Relationship of Critical Habitat to Department of Defense Lands*.

Issue 6—Miscellaneous

6-1. *Comment:* The U.S. Navy at the former MCAS El Toro commented that the proposed inclusion of the El Toro property as critical habitat was based on erroneous property ownership information, as the Department of Defense still owns almost 3,800 ac of former MCAS El Toro Property. Further, Map Sub-unit 2C included 1000 ac of Navy and Federal Aviation Administration owned property, not 1 ac as described in rule.

Our Response: We have noted these errors and have amended our records and this rule.

6-2. *Comment:* The Service's citation of its website as an example of public education about the Riverside fairy shrimp is inadequate; all the available materials about the Riverside fairy shrimp at the website are related entirely to critical habitat.

Our Response: We thank the commenter for their observation, and will seek to improve our website with additional educational material on the Riverside fairy shrimp.

Comments Related to the Draft Economic Analysis

1. *Comment:* One comment requests that the DEA update its land use and land ownership information regarding the former MCAS El Toro in Orange County. The comment also suggests that the Riverside fairy shrimp conservation activities will impose higher costs on facility improvements and land transfer projects planned for the former base than estimated by the DEA.

Our Response: The DEA describes the former MCAS El Toro's likely future land uses based on the best available public information and statements made by knowledgeable individuals in personal interviews. Base Realignment and Closure staff estimated that Riverside fairy shrimp-related conservation costs for El Toro would be \$150,000 over the next 20 years based on the assumption that the Service would allow historical uses of the site to continue if El Toro instituted a particulate monitoring program.

The comment suggests that if historical uses for the site continue and planned improvements to the base uses are implemented, then the habitat mitigation costs incurred by MCAS Tustin, a neighboring base that was also recently decommissioned, serve as a better estimate of costs for El Toro. The Final Economic Analysis (FEA) revises the land use and land ownership

context of the El Toro Sub-unit 2C and accepts the revised cost impact of \$100 million, noting that El Toro plans to acquire expensive land off-site, restore vernal pools, relocate the species to these pools, initiate biological monitoring, and provide for project management.

2. *Comment:* One commenter stated that the DEA underestimates the impact of Riverside fairy shrimp conservation activities on operations and planned capital improvements to March ARB in Riverside County.

Our Response: The DEA estimates impacts of Riverside fairy shrimp conservation activities on the former March Air Force Base based on the best available public information and statements made by knowledgeable individuals in personal interviews. For impacts likely to occur in the next 20 years, March Joint Powers Authority staff estimated that \$500,000 would be required to implement required Riverside fairy shrimp conservation while increasing the capacity of drainage facilities within which the habitat is located. The drainage facility improvements would support real estate development on more than 3,000 acres of the former base.

The comment suggests that ongoing operations at March ARB will also need costly modifications to comply with Riverside fairy shrimp-related regulations and laws. Based on March ARB's understanding of NEPA, an additional \$950,000 of environmental studies (at the Environmental Impact Statement level) will need to be completed to maintain operations of its runway and taxiways. In addition, a California Air National Guard heavy equipment unit will require relocation, costing an additional \$31.5 million. Although the comment references additional improvements to the site, including the relocation of California Department of Forestry aircraft to March ARB, construction of a parallel taxiway on the existing airfield, and installation of instrument upgrades as part of the March Inland Port, no information is available about the potential for these projects to impact Riverside fairy shrimp habitat or the magnitude of Riverside fairy shrimp-related project modification, if any.

The FEA accepts revised total cost impacts of \$33.0 million resulting from the California Air National Guard unit relocation, the incremental Environmental Impact Statement costs, and March Joint Powers Authority's drainage improvements.

3. *Comment:* A number of commenters stated that the DEA omits consideration of Riverside fairy shrimp-

related conservation impacts to major transportation infrastructure projects in Southern California.

Our Response: The DEA estimated no impacts of Riverside fairy shrimp conservation activities on the proposed extension of the 241 Toll Road based on the best available public GIS information and statements made by knowledgeable individuals in personal interviews. At this time, the project has nine alternatives that range from no action to two alternative road widening projects (I-5 and local arterials, both avoiding construction of the 241 Toll Road itself) to six alignment variations for the toll road. The public review, comment, and approval process for this project has been and is expected to continue be a time-consuming and politically contentious. Given the wide variety of regulatory, institutional, and political factors are play, the ultimate outcome cannot be predicted at this time.

The comment suggests that critical habitat Sub-unit 2H has the potential to add enormous costs to three of the Far East alignments. Additional analysis and interviews with local experts suggest instead that Map Sub-units 2F and 2H lie in the path of the Alignment 7/Avenida La Pata Variation alternative and the A-7 Far East Crossover, Far East (West), and Far East Modified alternatives. While no information is publicly available on the surface area of vernal pools likely to be disturbed by any of these alignments, there is some probability that one of these alignments will be chosen and Riverside fairy shrimp conservation measures may be required prior to project construction.

Given the uncertainty associated with the ultimate outcome, the FEA weights each of the nine project alternatives equally and multiplies the probability of each ($\frac{1}{9}$ or 11 percent) by an estimated worst case cost impact for each alternative. The analysis assumes no impact (a \$0 economic costs estimate) if the toll road is not built or if the construction footprint is located outside of proposed critical habitat. For alternatives expected to cross Riverside fairy shrimp habitat, the impact is the surface area of all vernal pools in the sub-unit times \$500,000 per acre as a generalized mitigation cost for transportation projects. Based on this revised methodology, the FEA estimates the 241 Toll Road may incur an additional \$43,000 in project modification costs based on available vernal pool surface area data for all nine alternatives.

The Service recognizes that the Toll Road alignment ultimately constructed, if any, will impact local, and possibly

regional, traffic flow. Future differences in traffic flows and volumes can, in turn, have a variety of indirect economic effects, including opportunity costs of labor, efficiency of goods delivery, and growth-inducing effects, among other factors. However, given the high degree of uncertainty associated with the Toll Road project and the variety of factors at play, it is difficult to isolate the unique contribution of the Riverside fairy shrimp conservation activities on the final outcome. Consequently, the FEA does not estimate potential economic impacts associated with potential changes in future transportation patterns attributable to the Riverside fairy shrimp conservation activities.

The comment also suggests that no formal analysis was completed on Caltrans projects underway or just completed in Southern San Diego County. Estimates of project-specific cost impacts based on Caltrans interviews for three projects in the Otay Mesa area of San Diego County can be found in Chapter V of the Economic Analysis.

4. *Comment:* Two comments suggest that real estate assumptions used to calculate impacts to private land development activities in one Southern Orange County sub-unit are inaccurate. The comments also recommend using census tract level data for supply and price effects associated with Riverside fairy shrimp conservation activities.

DEA Methods

Our Response: The DEA relies on DataQuick's transaction-based 2003 residential market data to characterize real estate prices in all zip codes where critical habitat was proposed. In addition, regional planning agencies such as the Southern California Association of Governments and the San Diego Association of Governments provided the DEA with Global Information System (GIS) layers that describe existing and planned land uses for areas of proposed critical habitat. Biological opinion records from the Service also establish a range for the habitat setaside, given variable project footprint and vernal pool site geometry. The combination of the three datasets produces an estimate of the total value of unimproved land affected by Riverside fairy shrimp-related conservation measures such as on-site habitat setasides.

The DEA considers the potential for habitat set-asides to affect aggregate housing supply and market prices. The San Diego Association of Government's data covering the period of 1990 to 1995 allow for an estimate of gross public

land uses required per 1,000 acres of private development. The Construction Industry Research Board supplies information about building activity since 1993. From this information, a forecast can be made of the Riverside fairy shrimp-related conservation land that is taken from residential development as a share of the market's future demand for land used to build new housing. The result suggests an insignificant or near zero impact on housing market supply and price in all "since listing" time periods and counties and in all but one county during the "2005–2024" time period.

Specific Real Estate Assumptions

Several comments object to the use of a 4.25 percent property appreciation rate in the DEA, believing it to be an understatement of the true appreciation rate given an anticipated shortage of finished lots for new housing in the County. To estimate future appreciation in home values, the DEA relies on long-term historical trends which are appropriate for the 20-year forecast utilized by the DEA.

In particular, the DEA relies on the average of a 10-year and a 20-year trend of repeat sales and refinancing of the same properties in California. The price indexing of the same properties over time controls for potential changes in housing quality, location and size over time. These data were obtained from U.S. Department of Labor, Office of Federal Housing Enterprise Oversight. The Service regards this source as the most reliable indicator of long-term real estate price trends because it is less affected by short-term business cycle fluctuations.

Several comments also state that 2004 housing price data would show a significant increase over 2003 data. Although potentially true at the County level, different zip codes may have highly varied year to year changes in housing prices. Establishing the actual year to year change in housing prices at the zip code level would require a purchase of a new dataset and matching (using GIS-based weighting) of this data to critical habitat land areas. Recalculating the median housing price is not possible given the time constraints for preparation of the FEA.

Finally, the comments posit that returns on real estate investments typically fall below the 10 percent level, in contrast to the assumption in the DEA of a 25 percent pre-tax return. These assumptions are used to determine the value of raw land as a percent of finished home price. The DEA bases its calculation on the understanding that the development of

a finished home may require the actions of several major agents who in turn move the land from an agricultural or un-entitled basis to an entitled, paper lot basis through to a finished lot and finished home, at which point the product is sold to the end user. Multiple private entities are likely to have participated in this process, each at different levels of risk.

The comments' preferences for a below-10 percent return on investment apply best to higher volume segments of the homebuilding industry in which a single entity purchases lots, builds homes, and sells them to buyers. The DEA, in contrast, uses a composite risk level that includes the greater returns to speculative land purchase and entitlement obtained for such property, and bases its calculations on a more appropriate composite return of 25 percent.

5. *Comment:* One comment requests that the DEA revise the sub-unit land use and land ownership descriptions for Southern Orange County proposed critical habitat. The comment also states that development of one sub-unit is now foreseeable and will be adversely impacted by Riverside fairy shrimp-related conservation activities.

Our Response: The DEA estimated the impacts of Riverside fairy shrimp conservation activities for the Radio Tower Road (Sub-unit 2G) and other Foothill sub-units based on the best available public information and statements made by knowledgeable individuals in personal interviews. After the publication of the notice of availability of the DEA, the Orange County Board of Supervisors changed the designation of the property to Suburban Residential from Open Space, and rezoned much of the land for Planned Community instead of Agricultural.

The FEA analyzes impacts from Riverside fairy shrimp-related conservation using the same methods established and applied to land use data in the DEA. Land that is zoned for development is deemed likely to be developed within the next 20 years, given general trends in land use for the areas identified as supportive of the Riverside fairy shrimp. These areas tend to be generally flat and readily built upon, notwithstanding other development considerations such as infrastructure, and land ownership. Given this conservative assumption, all 753 undeveloped acres of the Radio Tower Road are considered impacted by Riverside fairy shrimp-related conservation measures that include on-site habitat setasides worth \$8 million to

\$45 million dollars in potential land value over the next 20 years.

The FEA also uses corrected references of this region's habitat sub-units to the Ranch Plan, a master planned community covering many thousands of acres of the area.

6. *Comment:* One comment requests that the land ownership and planned uses information for Los Angeles International Airport (LAX) from the DEA be revised. The comment also suggests that the impacts to LAX from Riverside fairy shrimp-related conservation activities in the DEA are grossly understated.

Our Response: DEA Methods.

The DEA estimated the impacts of Riverside fairy shrimp conservation activities on LAX based on the best available public information and statements made by knowledgeable individuals in personal interviews. Several individuals contacted for personal interviews did not return phone calls during the process of preparing the DEA. The agency operating LAX, in recent publications, has characterized the airport's daily operations at and major facility expansion plans as incompatible with maintenance of Riverside fairy shrimp habitat.

Given LAX's objectives of minimizing the risk of aircraft-bird collisions that it believes is higher due to the presence of seasonal vernal pools on the airfield, the DEA assumes that Riverside fairy shrimp-related conservation measures would include eventual off-site mitigation of the entire 1.3 acres of wetted area. Adding monitoring and administrative costs to this sub-total, approximately \$950,000 in impacts are estimated for the airport over the next 20 years.

Impacts of Significant Events

The comment requests that a full accounting of the cost impact of two significant events be attributed to the designation of critical habitat on the LAX airfield:

- Property loss and loss of life damages resulting from serious aircraft-bird collisions.
- Loss of regional mobility for goods and people given an inability of the airport to complete its planned improvements.

Publicly available literature was searched for references to impacts related to catastrophic events involving bird strikes. One source estimates that between 1990 and 2004 approximately 732 bird strikes have taken place at LAX, inflicting total damages of \$17.5 million. The estimate did not match the damage levels of these incidents to birds

using vernal pool habitat, apart from birds that came into contact with aircraft because of other landscape features, natural or human constructed. It is not possible, therefore, to easily distinguish damage due to Riverside fairy shrimp-related habitat from damage related to birds attracted by other habitat or landscape features.

In addition, these bird strike loss estimates do not include an analysis of hardware or other means that would reduce bird attraction to ephemeral wetlands on airport land without removal of the wetlands as a habitat feature. Current discussions being held between LAX and the Service will explore the installation of equipment that allows for wetlands to be maintained on the airfield while discouraging avian feeding or travel patterns within the habitat.

Regarding airport operation and expansion plans, the DEA assumes that Riverside fairy shrimp conservation activities will have no impact on regional transportation mobility. Based on comments received, additional research was conducted on the potential relationship between LAX's operational capacity and regional economic activity. However, the Service was unable to identify any existing studies providing quantitative analysis of this relationship. A detailed analysis of the impact of LAX on the regional economy and/or the potential for RSF conservation activities to affect airport capacity, would require more time and effort than can be devoted to this FEA.

No information about Riverside fairy shrimp habitat disposition appears in any Environmental Impact Report/Statement alternative besides a loss of a small amount of wetted acreage in Alternative D. A consultation has been completed with the Service regarding Alternative D of the LAX Master Plan, in which construction activities at LAX would require a staging area that will necessitate fill of portions of the vernal pools. A second consultation recently began that will address LAX operations. As a worst case scenario, the FEA calculates the impact of Riverside fairy shrimp conservation as a requirement for LAX to mitigate for the entire loss of vernal pool habitat. At \$500,000 per wetted acre in unit mitigation costs, the sub-total of habitat restoration activities for the worst case scenario is estimated at \$650,000 for LAX.

The comment also stipulates that the restoration monitoring period will last 15 years instead of 5, and that the administrative cost of the operations consultation will amount to \$180,000. The FEA accepts these statements and calculates monitoring impacts at

\$750,000. Administrative costs are listed in the FEA as \$400,000 for historical (since listing) section 7 compliance regarding the Riverside fairy shrimp, and \$180,000 for the recently initiated consultation, for a total of \$580,000 in administrative spending.

FEA References to Documents and Permitting Processes

The FEA text on LAX's Master Plan and operations has been revised based on new information provided in the comment. EIR/EIS documents released to the public since the appearance of the first drafts of the DEA were reviewed, and the consultation history with the Service was updated.

Land Ownership Information

The DEA cites GIS layers provided by Southern California Association of Governments as the basis of existing land uses for proposed critical habitat on or near LAX. Table 10 in the DEA notes that Southern California Association of Governments data classifies 3 acres of the proposed habitat sub-unit as private developed, 66 acres as public land, and 35 acres as unfeasible to develop due to physical constraints. The comment requests that all sub-unit land be recognized as airport controlled (public) land. The impacts estimated by the FEA would not change based on the different land use classifications assigned to the proposed critical habitat by either the Southern California Association of Governments or the comment. Hence, the Southern California Association of Governments information will remain the primary source of land use data.

Comments From States

Section 4(i) of the Act states "the Secretary shall submit to the State agency a written justification for her failure to adopt regulation consistent with the agency's comments or petition." Comments received from States regarding the proposal to designate critical habitat for the Riverside fairy shrimp are addressed below.

1. *State Comment:* The California Department of Fish and Game requested that the Service avoid any later revisions to the proposed critical habitat that would include Department-owned lands.

Our Response: No lands or areas within the jurisdiction of the California Department of Fish and Game were considered within the proposed or final critical habitat designation.

Summary of Changes From Proposed Rule

Based on our review of the public comments received on the proposed designation of critical habitat, the economic analysis for the Riverside fairy shrimp, and available information, we re-evaluated our proposed designation and revised the final critical habitat designation for this species as follows.

Areas Removed From Critical Habitat Designation

We re-evaluated our proposed critical habitat unit boundaries, refined our mapping methodology, and used new information to remove 4,822 ac (1,951 ha) of non-essential habitat within each critical habitat map sub-unit (see *Table 1* and *Methods* section below for more details).

In the proposed rule, we identified critical habitat in Sub-units 1C, 2A, 2B, 3A, and in portions of 5A and 5B. However, we have re-evaluated these sub-units based on updated information, and determined that, due to habitat modifications and ongoing operations and maintenance activities, these areas no longer contain one or more of the necessary PCE's for the Riverside fairy shrimp to successfully complete its life-cycle. We therefore removed the following areas from consideration for the final critical habitat designation:

(1) *Cruzan Mesa (Sub-unit 1C)*. This sub-unit consisted of approximately 534 ac (216 ha). We have insufficient documentation regarding the occurrence or non-occurrence of the Riverside fairy shrimp in the Cruzan Mesa vernal pools, it occurs outside the known geographical range of the species, and we were unable to determine whether this area is essential to the conservation of this species. We therefore removed this sub-unit from our analyses of critical habitat.

(2) *Los Angeles International Airport (LAX; Sub-units 2A, 2B)*. These sub-units consisted of approximately 103 ac (42 ha) in total. As a result of the ongoing operations and maintenance activities at LAX, these ephemeral wetlands cannot pond long enough for the Riverside fairy shrimp to complete its lifecycle. Thus, we have removed both proposed sub-units at LAX from critical habitat designation as they do not contain this primary constituent elements, and are thus not essential for the conservation of the Riverside fairy shrimp.

(3) *March ARB (Sub-unit 3A)*. This sub-unit consisted of approximately 101 ac (41 ha). We have re-evaluated this sub-unit and determined to remove it

from this critical habitat designation as the vernal pool area has been modified and no longer contains the primary constituent elements for the Riverside fairy shrimp.

(4) *Southwestern and Southeastern Otoy Mesa (portions of Sub-units 5A, 5B)*. These sub-units consisted of approximately 255 ac (104 ha) in total. Portions of these sub-units (totaling 119 ac (48 ha)) lie within the footprint of the BIS, which is completed or under construction by the DHS for use in their border patrol activities. After evaluation of these areas, we determined that the necessary PCE's for the Riverside fairy shrimp are absent; these areas have thus been removed from our critical habitat analyses. See discussion of *Units Excluded Due to National Security Under Section 4(b)(2) of the Act* below.

Units Exempted Due to INRMPs Under Section 4(a)(3) of the Act

(1) *MCB Camp Pendleton (Sub-units 4A, 4B)*. The total area of these proposed sub-units was approximately 254 ac (103 ha), and contains approximately 226 ac (91 ha) of essential habitat in the final rule. In the proposed rule, we excluded essential habitat within mission-critical training areas on MCB Camp Pendleton under section 4(b)(2) of the Act. In this final rule, we re-evaluated this exclusion and instead have exempted these mission-critical training areas as well as other essential habitat areas on MCB Camp Pendleton from critical habitat under section 4(a)(3) of the Act (see *Application of Section 4(a)(3) to MCB Camp Pendleton* for a detailed discussion). Thus, no lands owned or controlled by MCB Camp Pendleton have been designated as critical habitat in this final rule.

Lands leased to the California Department of Parks and Recreation have been excluded under section 4(b)(2) of the Act (see *Units Excluded Due to National Security Under Section 4(b)(2) of the Act*).

(2) *MCAS Miramar*. We reaffirm our exemption of MCAS Miramar under section 4(a)(3) of the Act.

Units Excluded Due to National Security Under Section 4(b)(2) of the Act

(2) *March ARB (Sub-unit 3B)*. This sub-unit consisted of approximately 44 ac (18 ha) of essential habitat. See *Application of Section 4(b)(2) National Security to March Air Reserve Base (March ARB)* for a detailed discussion. Thus, no lands owned or controlled by March ARB have been designated as critical habitat in this final rule.

(3) *Department of Homeland Security (DHS; Sub-unit 5B)*. We have excluded approximately 147 ac (59 ha) of

essential habitat within DHS-owned lands along the U.S.—Mexico border (see *Application of Section 4(b)(2) to Department of Homeland Security lands* for a detailed discussion). Thus, no lands owned by the DHS have been designated as critical habitat.

(1) *Lands near Christianitos Creek (Sub-unit 2H)*. This sub-unit consisted of approximately 47 (19 ha) of essential habitat on lands MCAS Camp Pendleton leased to the California Department of Parks and Recreation. We have excluded this sub-unit (see *Application of Section 4(b)(2) National Security to MCAS Camp Pendleton* for a detailed discussion).

Exclusions Due to Economic Impacts Under Section 4(b)(2) of the Act

In the proposed rule, we identified vernal pools in 6 sub-units for which we proposed critical habitat. In this final rule, we have conducted benefits analyses and under section 4(b)(2) of the Act and have determined not to designate critical habitat in these sub-units for economic impacts. By excluding these 6 units, some or all of the costs associated with a critical habitat designation in those areas will be avoided. This regards the following sub-units:

(1) *Former MCAS El Toro (Sub-unit 2C)*. The proposed area of this sub-unit was approximately 133 ac (54 ha), and contains approximately 14 ac (6 ha) of essential habitat in the final rule. We have excluded all of this sub-unit (see *Application of Section 4(b)(2) Economic Exclusion to lands on Former MCAS El Toro (Sub-unit 2C)* below for a detailed discussion).

(2) *Saddleback Meadows (northern portion of Sub-unit 2D)*. In the proposed rule, Sub-unit 2D consisted of approximately 736 ac (298 ha). We have excluded approximately 57 ac (23 ha) of essential habitat in the northern portion of sub-unit 2D that occurs within private lands owned by Saddleback Meadows Residential Development Project and other private landowners. See *Application of Section 4(b)(2) Economic Exclusion to Saddleback Meadows (portion of Sub-unit 2D)* below for a detailed discussion.

(3) *Tijeras Creek (Sub-unit 2E)*. The proposed area of this sub-unit was approximately 321 ac (130 ha), and contains approximately 101 ac (41 ha) of essential habitat in the final rule. We have excluded all of this sub-unit (see *Application of Section 4(b)(2) Economic Exclusion to lands near Tijeras Creek (Sub-unit 2E)* below for a detailed discussion).

(4) *Chiquita Ridge (Sub-unit 2F)*. The proposed area of this sub-unit was

approximately 489 ac (198 ha), and contains approximately 263 ac (106 ha) of essential habitat in the final rule. We have excluded all of this sub-unit (see *Application of Section 4(b)(2) Economic Exclusion to lands on Chiquita Ridge (Sub-unit 2F)* below for a detailed discussion).

(5) *Radio Tower Road (Sub-unit 2G)*. The proposed area of this sub-unit was approximately 736 ac (298 ha), and contains approximately 417 ac (169 ha) of essential habitat in the final rule. We have excluded all of this sub-unit (see *Application of Section 4(b)(2) Economic Exclusion to lands near Radio Tower Road (Sub-unit 2G)* below for a detailed discussion).

(6) *Southeastern Otoy Mesa (Sub-unit 5C)*. The proposed area of this sub-unit was approximately 866 ac (350 ha), and contains approximately 111 ac (45 ha) of essential habitat in the final rule. We have excluded all of this sub-unit (see *Application of Section 4(b)(2) Economic Exclusion to Southeastern Otoy Mesa (Sub-unit 5C)* below for a detailed discussion).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have

features that are "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Specific areas within the geographic area occupied by the species may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas constitute critical habitat, a primary source of information is generally the listing documents for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with

the provisions of section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub.L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we are to use the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential to the conservation of the Riverside fairy shrimp. We have reviewed available information that pertains to the habitat requirements of this species. To accomplish this, we utilized data and information contained in, but not limited to, the final rule listing the Riverside fairy shrimp (58 FR 41384, the prior proposed and final rules designating critical habitat for the Riverside fairy shrimp (69 FR 23024, 65 FR 57136, 66 FR 29384), the proposed rule to designate critical habitat for the San Diego fairy shrimp (68 FR 19888), the Vernal Pools of Southern California Final Recovery Plan (Recovery Plan; Service 1998), research and survey

observations published in peer-reviewed scientific journals, maps from the regional Geographic Information System (GIS) database with vegetation and species coverages (including vegetation layers for Orange and San Diego counties), the California Natural Diversity Database (CNDDDB), the California Vernal Pool Assessment Preliminary Report (Keeler-Wolf *et al.* 1998), vernal pool mapping and other data collected for the development of HCPs, reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to us through section 7 consultations, reports from site investigations on MCB Camp Pendleton and MCAS Miramar, site visit reports by staff biologists, reports and documents on file in the Service's field offices, and communications with experts outside the Service who have extensive knowledge of vernal pool species and habitats. In addition, we used information contained in comments received by May 27, 2004 which were submitted on the proposed critical habitat designation (69 FR 23024) and comments received by November 18, 2004 submitted on the draft economic analysis (69 FR 61461).

Based on a compilation of information listed above on the known occurrences of Riverside fairy shrimp, we created maps indicating the habitat associated with each of the occurrences. The habitat units were delineated using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program to evaluate GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. Data layers included current and historic species occurrence locations (CNDDDB 2002); we presumed occurrences identified in the database to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files, including section 10(a)(1)(A) reports and biological assessments.

We then evaluated the areas defined by the overlap of the combined coverages (data layers) to initially focus on those areas which provide those physical and biological features essential to the conservation of the Riverside fairy shrimp; *i.e.*, we identified and mapped vernal pool basins and ephemeral wetlands supporting the Riverside fairy shrimp that contained the primary constituent elements for the species. The areas were further refined by using satellite imagery, aerial map coverages,

elevational modeling data, vegetation/land cover data, and agricultural/urban land use data to eliminate areas that contained features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of the Riverside fairy shrimp.

Next, the upslope areas, located immediately surrounding the vernal pool basins and ephemeral wetlands, areas that also contained the primary constituent elements for the Riverside fairy shrimp were mapped based on topographic features such as ridges, mima mounds, and elevational gradients or slopes. The boundaries for these areas were further refined and delineated by mapping those areas that sloped toward the pools, from highest point to highest point in the immediate surrounding upland areas, following the map's topographic elevational gradient around the high points (peaks), to the sides and the lowest part of the basin that encompassed the complex of vernal pools, keeping within the boundaries of the previously proposed critical habitat. Those areas that the topographic maps showed sloped steeply away from the pools, or that were developed or altered, such that necessary PCEs (*i.e.*, water, soil, minerals) could not be transported toward the vernal pools over such areas, were left outside the refined delineation. This method was used for vernal pools in both basin and mesa-type topographic settings.

The combined extent of these mapped areas was defined as the habitat essential to the survival and recovery of the Riverside fairy shrimp. Whenever possible, areas not containing the primary constituent elements, such as developed areas or open water, were not included as essential habitat. To aid us in this elimination, we used a finer mapping unit of 100 x 100 m. After creating GIS coverage of the essential areas, we described the boundaries of the essential areas using a 100 m grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27). The areas were then analyzed with respect to sections 4(a)(3), and 4(b)(2) of the Act, and any applicable and appropriate exclusions were made.

We eliminated areas because: (1) The area is highly degraded and may not be restorable or, (2) the area is small, highly fragmented, or isolated, and may provide little or no long-term conservation value. We also exempted areas under section 4(a)(3) and excluded areas under section 4(b)(2) of the Act for military, economic or other reasons where we concluded that such exclusions will not result in the

extinction of the Riverside fairy shrimp (see *Exclusion of Critical Habitat Under Sections 4(a)(3), 3(5)(A) and 4(b)(2) of the Act* below). The specific modifications are described in the Summary of Changes from the Proposed Rule section of this rule. The remaining essential areas are the final designation of critical habitat, presented as four geographically distinct habitat units. The essential areas, an elaboration on exclusions, and the specific areas designated as critical habitat are described below.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Based on our current knowledge of the life history and ecology of the Riverside fairy shrimp, the requirements of the habitat to sustain the essential life history functions of the species, and the ecological and hydrologic functions of vernal pool complexes, as summarized above in the Background section, we have determined that the Riverside fairy shrimp has several primary constituent elements, or PCEs. Its two most significant PCEs are: (1) Vernal pools, swales, and other ephemeral wetland features of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for the Riverside fairy shrimp to complete their life cycle; and (2) the geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of immediately surrounding upslope areas that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of

the vernal pool, maintain suitable periods of pool inundation, and maintain water and nutrient quality and soil moisture to enable the Riverside fairy shrimp to carry out their lifecycle.

1. Primary Constituent Element: Vernal Pools, Swales, Other Ephemeral Wetland Features

Vernal pools provide for space, physiological requirements, shelter, and reproduction sites for the Riverside fairy shrimp. Vernal pools provide the necessary soil moisture and aquatic environment required for cyst hatching, growth, maturation, reproduction, and dispersal, and the appropriate periods of dry-down for seed and cyst dormancy, as well as for seed germination of plant species found in the pool that contribute organic matter and dissolved gasses to the water. Both the wet and dry phases of the vernal pool help to reduce competition with strictly terrestrial or strictly aquatic plant or animal species. The wet phase provides the necessary cues for hatching, germination, and growth, while the drying phase allows the vernal pool plants to flower and produce seeds and the vernal pool crustaceans to mature and produce cysts. We conclude this element is essential to the conservation of the Riverside fairy shrimp because this species is ecologically dependent on seasonal fluctuations, such as absence or presence of water during specific times of the year, and duration of inundation and the rate of drying of their habitats. The Riverside fairy shrimp cannot persist in perennial wetlands or wetlands that are inundated for the majority of the year, nor can they persist without periodic seasonal inundation.

Vernal pools and other ephemeral wetlands provide space during their wetted periods for individual and population growth and normal behavior of vernal pool species by providing still, freshwater habitat of appropriate depth, duration, temperature, and chemical characteristics for juvenile and adult vernal pool crustaceans to hatch, swim, grow, reproduce and behave normally. Vernal pools and other ephemeral wetlands also provide soil space during both dry and wetted periods for the maintenance of dormant cyst and seed banks, which allow populations of vernal pool species to maintain themselves throughout the unpredictable and highly variable environmental conditions experienced by their active, non-dormant life history stages. Vernal pools and other ephemeral wetlands also provide various physiological requirements for both vernal pool plants and crustaceans.

For crustaceans they provide water, oxygen, and food such as plankton, detritus, and rotifers. By drying seasonally, ephemeral wetlands provide cover or shelter from many aquatic predators and competitors. Similarly, by undergoing seasonal inundation, these areas provide shelter for vernal pool species from invading species which would otherwise out-compete them for space, light, water, or nutrients. Finally, vernal pool crustaceans require wetted ephemeral wetlands in which to mate, and both vernal pool crustaceans and vernal pool plants deposit cysts or eggs in these wetland areas, which must then dry to allow hatching or germination. Wetted ephemeral wetlands may also tend to attract waterfowl, which act as important seed and cyst dispersers (Proctor 1965; Silveira 1998).

2. Primary Constituent Element: Geographic, Topographic, and Edaphic Features That Support Aggregations of Hydrologically Interconnected Pools, Swales, and Other Ephemeral Wetlands

The second PCE (the entire vernal pool complex, including the pools, swales, and associated upslope areas) is essential to maintain both the aquatic phase and the drying phase of the vernal pool habitat. Although the Riverside fairy shrimp does not occur in the strictly upslope areas surrounding vernal pools, they are critically dependent on these upland areas to maintain the seasonal cycle of ponding and drying in the ephemeral wetland areas. The hatching of cysts (and the germination of vernal pool plants) is dependent on the timing and length of inundation of the vernal pool habitat. The rate of vernal pool drying, which greatly influences the water chemistry, in turn directly affecting the life cycle of the Riverside fairy shrimp, is also largely controlled by interactions between the vernal pool and the surrounding uplands (Hanes *et al.* 1990; Hanes and Stromberg 1998). Soil morphology at the pool basin and on the upslope areas provides the pool with an impermeable surface or subsurface layer, accumulation of organic matter, and a unique assemblage of nutrient availability; in fact, biotic and reduction-oxidation (redox) interactions in the soil control the turnover of nutrients in the pool (Hobson and Dahlgren 1998). Thus, the biogeochemical environment strongly influences hydrologic properties and play a critical role in nutrient cycling in vernal pool ecosystems (Hobson and Dahlgren 1998). Additionally, upslope areas provide an important (and often primary) source of detritus, which is a major food source for vernal pool

crustaceans and nutrient source for vernal pool plants. Certain upland and swale areas may also provide for population growth by channeling flood waters from overflowing ephemeral wetland areas so that seeds, cysts, or adult individuals are washed from one such wetland to another. The upslope areas provide habitat for avian species and other animals known to aide in the dispersal of vernal pool species (Zedler and Black 1992; Silveira 1998). The surrounding upslope and swale areas also provide habitat for pollinator species that may be specifically adapted to some of the vernal pool plant species (Thorp 1998; Eriksen and Belk 1999), as well as habitat for waterfowl, amphibians, mammals, or insects, all of which are important for dispersal of cysts (and seeds, pollen of vernal pool flora).

The upslope areas immediately surrounding vernal pools are therefore essential for providing the same physical and biological factors as are provided by the vernal pools or ephemeral wetland areas. We have used vernal pool complexes as the basis for determining populations of vernal pool crustaceans since the species were first proposed for listing. The genetic characteristics of fairy shrimp, as well as ecological conditions, such as watershed contiguity, indicate that populations of these animals are defined by pool complexes rather than by individual vernal pools (cf. Fugate 1992, 1998; King 1996). Therefore, the most accurate indication of the distribution and abundance of the Riverside fairy shrimp is the number of inhabited vernal pool complexes. Individual vernal pools occupied by the Riverside fairy shrimp are most appropriately referred to as "sub-populations" (59 FR 48136).

Our use of vernal pool complexes to define populations of the four listed crustaceans was upheld by the U.S. District Court in post-listing challenge to the listing (*Building Industry Association of Superior California et al. v. Babbitt et al.*, CIV 95-0726 PLF). The July 25, 1997, court decision stated that the plaintiffs were on notice that the Service would consider vernal pool complexes as a basis for determining fairy shrimp populations. The court also concluded that the use of this methodology was neither arbitrary nor capricious. The Court of Appeals for the D.C. Circuit upheld the district court's decision, and the Supreme Court has declined to hear the case. Each of the critical habitat units likely includes some areas that are unoccupied by the vernal pool crustaceans. "Unoccupied" is defined here as an area that contains

no hatched vernal pool crustaceans, and that is unlikely to contain a viable cyst or seed bank. Determining the specific areas that the vernal pool crustaceans occupy is difficult (see *Background*). Depending on climatic factors and other natural variations in habitat conditions, the size of the localized area in which hatched crustaceans appear may fluctuate dramatically from one year to another. In some years, individuals may be observed throughout a large area, and in other years they may be observed in a smaller area or not at all. Because it is logistically difficult to determine how extensive the cyst or seed bank is at any particular site, and because hatched Riverside fairy shrimp may or may not be present in all vernal pools within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by the vernal pool crustaceans. Therefore, small areas of currently unoccupied habitat are probably interspersed with areas of occupied habitat in each unit. The inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of the Riverside fairy shrimp. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between groups of organisms within a unit, and support populations of vernal pool plant pollinators and cyst dispersal organisms. Both occupied and unoccupied areas that are designated as critical habitat are essential to the conservation of the Riverside fairy shrimp. All of the above described PCEs do not have to occur simultaneously within a unit for that unit to constitute critical habitat for the Riverside fairy shrimp.

3. Water Chemistry and Physiological Requirements

Temperature, water chemistry, and length of time vernal pools are inundated with water are important factors that effect and potentially limit the distribution of the Riverside fairy shrimp. The water in the pools that support Riverside fairy shrimp typically is dilute with (1) low to moderate total dissolved solids (mean 77 milligrams per liter (mg/l) or parts per million (ppm)), (2) low to moderate salinity, (3) low levels of alkalinity (mean 65 mg/l), and (4) water pH at neutral or just below (6.4-7.1; Eng *et al.* 1990; Gonzalez *et al.* 1996; Eriksen and Belk 1999). Riverside fairy shrimp can tightly regulate their internal body chemistry in pool environments with varying salinity and alkalinity (Gonzalez *et al.* 1996). In a

laboratory experiment, Riverside fairy shrimp could maintain their internal levels of salt concentration (Na^+) fairly constant over a wide range of external concentrations (0.5–60 mmol/l^3), but they were sensitive to the extremes, with 100 percent mortality occurring at 100 mmol/l^3 (2,300 mg/l^3 ; Gonzalez *et al.* 1996). Although the species could maintain their internal levels of salt concentration fairly constant over a wide range of external concentrations (0.5–60 mmol/l^3), Riverside fairy shrimp could not survive in laboratory environments where external alkalinity was higher than 800 to 1,000 mg/l HCO_3^- .

The Riverside fairy shrimp is found in water temperatures ranging between 50 and 77 degrees F (10 and 25 degrees C; Hathaway and Simovich 1996). Importantly, studies show that the Riverside fairy shrimp is sensitive to water temperature (Hathaway and Simovich 1996). After pool inundation, hatching occurred significantly more rapidly (mean 7 days) when the temperature was cooler and fluctuated within a range of 41–77 degrees F (5–25 degrees C), and most slowly (mean 25 days) with steady warm temperature of 77 degrees F (25 degrees C). Furthermore, at cooler fluctuating temperatures (41–59 degrees F (5–15 degrees C)), the highest proportion of cysts hatched, over 15 percent, while fewest cysts hatched (1–3 percent) at a steady higher temperature of 77 degrees F (25 degrees C). In fact, the proportion of cysts hatching after exposure to a (5–15 C) fluctuating temperature range regime far exceeded that reached at steady temperature, with cysts exposed to any steady temperature above 50 (10 degrees C) showing almost no hatching success (Hathaway and Simovich 1996). Water within pools supporting fairy shrimp may be clear, but more commonly it is moderately turbid (Eriksen and Belk 1999).

4. Sites for Breeding, Reproduction and Rearing of Offspring

The Riverside fairy shrimp is restricted to a small sub-set of long-lasting vernal pools and ephemeral wetlands in southern California because this animal takes approximately two months to mature and reproduce (Hathaway and Simovich 1996). In contrast, the San Diego fairy shrimp, another federally endangered fairy shrimp species found in southern California, can mature and reproduce in less than one month. Most vernal pools in southern California do not pool for a sufficient amount of time to support the Riverside fairy shrimp. Pools that contain Riverside fairy shrimp usually

accumulate water to a depth greater than 10 in (25 cm) and some pools that support this species fill to a depth of 5 to 10 ft (1.5–3 m). In the years that Riverside fairy shrimp successfully reproduce, pools fill for 2 to 3 months and some pools have been reported to remain filled for up to 7 months. Riverside fairy shrimp can survive as cysts for multiple years; therefore, it is not necessary for ideal conditions to exist every year for this species to persist.

5. Disturbance, Protection, and the Historical Geographical Distributions

The majority of sites currently supporting the Riverside fairy shrimp have experienced disturbance, some more recently than others and some to a greater extent than others. The pools that support Riverside fairy shrimp are generally found in flat or moderately sloping areas. Many of the pools are on gently sloping areas near the coast, and in grassland habitats. These areas, located in a region of current explosive urban expansion, are easily assessable and amenable to construction. Thus a major factor contributing to the decline of vernal pool species, including the Riverside fairy shrimp, is mortality and habitat elimination through human construction and development of vernal pool areas for a wide variety of purposes. Additionally, vernal pool areas have been vulnerable to agriculture, cattle grazing, and off-road vehicle activities. Many of the pools that currently support Riverside fairy shrimp have been artificially deepened in the past by ranchers to provide water for stock animals (Hathaway and Simovich 1996). This species has only been studied since the late 1980s; therefore, the extent of its historical distribution is not well understood. Current estimates suggest that 90 to 97 percent of vernal pool habitat has been lost in southern California (Mattoni and Longcore 1997; Bauder and McMillan 1998; Keeler-Wolf *et al.* 1998; Service 1998). The conservation of the few remaining occurrences of Riverside fairy shrimp is essential for its conservation (Service 1998).

6. Summary of PCEs Essential to the Conservation of the Riverside Fairy Shrimp

Pursuant to our regulations, we are required to identify the known physical and biological features, *i.e.*, primary constituent elements, essential to the conservation of the Riverside fairy shrimp, together with a description of any critical habitat that is proposed. In identifying the primary constituent elements, we used the best available

scientific and commercial data available. The three main primary constituent elements determined essential to the conservation of Riverside fairy shrimp must have the following characteristics.

A. The first PCE, small to large pools or pool complexes, must have the appropriate size and volume, local climate, topography, water temperature, water chemistry, soil conditions, and length of time of inundation with water necessary for Riverside fairy shrimp incubation and reproduction, as well as dry periods necessary to provide the conditions to maintain a dormant and viable cyst bank. Specifically, the vernal pool conditions necessary to allow for successful reproduction of Riverside fairy shrimp fall within the following ranges:

- i. Moderate to deep depths ranging from 10 in (25 cm) to 5–10 ft (1.5–3 m),
- ii. Ponding inundation lasting for a minimum length of 2 months up to 5–8 months or more, *i.e.*, a sufficient wet period in winter and spring months to allow the Riverside fairy shrimp to hatch, mature, and reproduce, followed by a dry period prior to the next winter and spring rains,
- iii. Water temperature that falls within the range of 41 and 77 degrees F (5 and 25 degrees C),
- iv. Water chemistry with low total dissolved solids and alkalinity (means of 77 and 65 parts per million, respectively), and
- v. Water pH within a range of 6.4–7.1.

B. The second PCE, the immediately surrounding upslope areas, must provide:

- i. Hydrologic flow to fill the pools and maintain the seasonal cycle of ponding and drying, at the appropriate rates,
- ii. A source of detritus and nutrients,
- iii. A source of soil and mineral transport to maintain the appropriate water chemistry and impermeability of the pool basin, and
- iv. Habitat for animals that act as dispersers of cysts and vernal pool plant seeds or pollen.

The size of the immediately surrounding upslope areas varies greatly and cannot be generalized and has been assessed for each sub-unit. Factors that affect the size of the surrounding upslope area include surface and underground hydrology, the topography of the area surrounding the pool or pools, the vegetative coverage, and the soil substrate in the area. Watershed sizes designated vary from a few acres to greater than 100 ac (40 ha).

C. The third PCE, the soils in the summit, rim and basin geomorphic positions, must have a clay component and/or an impermeable surface or

subsurface layer, and must provide a unique assemblage of available nutrients and redox conditions known to support vernal pool habitat. The biogeochemical environment strongly influences hydrologic properties and play a critical role in nutrient cycling in vernal pool ecosystems (Hobson and Dahlgren 1998).

Criteria Used To Identify Critical Habitat

Based on the best scientific information available, we are designating as critical habitat lands that are essential to the conservation of the Riverside fairy shrimp and contain the PCEs identified above and require special management considerations or protection. Both individual vernal pools and vernal pool complexes are essential for conservation of the Riverside fairy shrimp because of the limited numbers of remaining vernal pools and their highly localized distribution (cf. Gilpin and Soulé 1986; Lesica and Allendorf 1995; Lande 1999).

Areas essential to the conservation of the species are those that are necessary to advance at least one of the following conservation criteria: (1) The conservation of areas representative of the geographic distribution of the species. Species that are protected across their ranges have lower chances of extinction (Soulé and Simberloff 1986; Murphy *et al.* 1990; Primack 1993; Given 1994; Hunter 1996; Pavlik 1996; Noss *et al.* 1999; Grosberg 2002). Maintenance of representative occurrences of the species throughout its geographic range helps ensure the conservation of regional adaptive differences and makes the species less susceptible to environmental variation or negative impacts associated with human disturbances or natural catastrophic events across the species' entire range at any one time (Primack 1993; New 1995; Hunter 1996; Helm 1998; Redford and Richter 1999; Rossum *et al.* 2001; Grosberg 2002). Additionally, the conservation of the geographic distribution of the species is one of the physical and biological features we are required to consider under our regulations (50 CFR 424.13(b)). Accordingly, we considered the number of occupied areas in each vernal pool region, and determined whether each occupied area is essential to the conservation of the species in the region or as a whole.

(2) The conservation of areas representative of the ecological distribution of the Riverside fairy shrimp. Each of the critical habitat units is associated with various combinations of soil types, vernal pool chemistry,

geomorphic surfaces (landforms), and vegetation community associations. Maintaining the full range of varying habitat types and characteristics for a species is essential because it would encompass the full extent of the physical and environmental conditions necessary for the species (Zedler and Ebert 1979; Ikeda and Schlising 1990; Fugate 1992; Gonzales *et al.* 1996; Fugate 1998; Platenkamp 1998; Bainbridge 2002; Noss *et al.* 2002a). Vernal pool species are extremely adapted to the physical and chemical characteristics of the habitat in which they occur. Additionally, the conservation of the ecological distribution of the species is one of the physical and biological features we are required to consider under our regulations 50 CFR 424.13(b), and was also strongly endorsed by several peer reviewers (*see* Peer Review section). Accordingly, we considered the extent to which habitat types occupied by the species could be conserved in light of the number of occupied areas and the threats involved.

(3) The conservation of areas necessary to allow movement of cysts between areas representative of the geographic and ecological distribution of the species. As a result of dispersal events within and between vernal pool complexes, and environmental conditions that may prevent the emergence of dormant cysts for up to several decades, the presence of vernal pool species is dynamic in both space and time (Eriksen and Belk 1999; Noss *et al.* 2002a). We therefore determined that essential habitat for the Riverside fairy shrimp must provide for movement within and between vernal pool complexes to provide for the varying nature and expression of the species, and also allow for gene flow and dispersal and habitat availability that accommodate natural processes of local extirpation and colonization over time (Stacey and Taper 1992; Falk *et al.* 1996; Davies *et al.* 1997; Husband and Barrett 1998; Holt and Keitt 2000; Keymer *et al.* 2000; Donaldson *et al.* 2002).

We therefore selected vernal pool complexes occupied by the Riverside fairy shrimp in a distribution sufficient to ensure the known geographic range, geographical isolation, and likely genetic diversity of the species. Map Unit 1 represents the northern extreme of the distribution and Map Unit 4 represents the southern extreme of the distribution. Each of these isolated occurrences is greater than 10 mi (16 km) from other known Riverside fairy shrimp locations. We also selected vernal pools occupied by Riverside fairy

shrimp to ensure that the density and localized distribution of vernal pools occurs within a variety of different habitat types. Map Unit 2 represents the last known vernal pools in Orange County, and they are within 5 mi (8 km) of each other and include pool habitats not associated with mima mound vernal pools complexes.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

When defining critical habitat boundaries, we made every effort to exclude all developed areas, such as buildings, paved areas, and other lands unlikely to contain primary constituent elements essential for the Riverside fairy shrimp conservation. Any such structures remaining inside of final critical habitat boundaries are not considered part of the units. This also applies to the lands directly on which such structures lie. A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection.

The areas designated as critical habitat in this final rule face ongoing threats that will require special

management considerations or protection. These threats are common to all of the areas designated as critical habitat. The threats that require special management considerations or protection are vernal pool elimination due to destruction and development, alterations made to the hydrologic or soil regime of the vernal pools and their associated upslope areas; disturbance to the claypan and hardpan soils within the vernal pools, disturbance or destruction of the vernal pool flora; and the invasion of exotic plant and animal species into the vernal pool basin. Habitat loss continues to be the greatest direct threat to Riverside fairy shrimp.

Changes in hydrology which affect the Riverside fairy shrimp's primary constituent elements are caused by activities that alter the surrounding topography or change historical water flow patterns in the watershed. Even slight alterations of the hydrology can change the depth, volume and duration of ponding inundation, water temperature, soil, mineral and organic matter transport to the pool and thus its water quality and chemistry, which in turn can make these primary constituent elements unsuitable for Riverside fairy shrimp. Activities that impact the hydrology include but are not limited to road building, grading and earth moving, impounding natural water flows, and draining of the pool(s) or of their immediately surrounding upslope areas. Impacts to the hydrology of vernal pools can be managed through avoidance of such activities in and

around the pools and the associated surrounding upslope areas.

Disturbance to the impermeable layer of claypan and hardpan soils within vernal pools occupied by the Riverside fairy shrimp may alter the depth, ponding inundation, water temperature, and water chemistry. Physical disturbances to claypan and hardpan soils may be caused by excavation of borrow material, off-road vehicles, military training activities, agricultural disking, drilling, or creation of berms that obstruct the natural hydrological surface or sub-surface flow of water runoff and precipitation. These impacts can be reduced by avoidance of vernal pools.

Invasive plant and animal species may alter the ponding inundation and water temperature by changing the evaporation rate and shading of standing water in vernal pools. Invasive plant species, such as brass-buttons (*Cotula coronopifolia*) and Pacific bentgrass (*Agrostis avenaceae*), compete with native vernal plant species and may alter the primary constituent elements in these vernal pools. Invasive plants need to be removed and managed to maintain the primary constituent elements needed by the Riverside fairy shrimp in a manner consistent with the conservation of native vernal pool plants.

Critical Habitat Designation

We are designating four units (5 sub-units) as critical habitat for the Riverside fairy shrimp. The critical

habitat areas described below constitute our best assessment at this time of the areas essential for the conservation and provide one or more of the primary constituent elements essential to the species of the Riverside fairy shrimp, and that may require special management. The four map units designated as critical habitat include Riverside fairy shrimp habitat within the species' range in the United States, and are referred to by the following geographic names: (Map Unit 1) Ventura County, (Map Unit 2) Orange County, (Map Unit 3) North San Diego County coastal area, and (Map Unit 4) South San Diego County, Otay Mesa. An overview of the regional units that are designated as critical habitat in this final rule, with the proposed and final sub-unit sizes, are shown in Table 1. Other lands have not been designated critical habitat for the Riverside fairy shrimp because they do not meet the definition of critical habitat under section 3(5)(A), or, although essential, have been exempted under section 4(a)(3) and excluded under section 4(b)(2) of the Act (see Table 2). For a summary of the approximate total critical habitat area designated by county and land ownership, and a summary of the areas of land encompassed by HCPs and NCCPs, see Tables 3 and 4.

Critical habitat units and areas designated for the Riverside fairy shrimp. Also shown are proposed units which were exempted or excluded from the final designation.

TABLE 1

Critical Habitat Unit	Sub-unit number: proposed rule	Ac (ha) proposed rule (April 28, 2004)	Essential habitat Ac (ha) final rule	Designated Ac (ha) final rule
Ventura County, land in City of Moorpark Greenbelt, north Tierra Rejada Valley	1A	74 (30)	47 (19)	47 (19)
Ventura County, land south Tierra Rejada Valley	1B	437 (177)	185 (75)	185 (75)
Ventura County, land on Cruzan Mesa	1C	534 (216)	0	0
Los Angeles County, Los Angeles Basin—Orange Management Area, land at LAX	2A	103 (42)	0	0
	2B			
Orange County, land within former MCAS El Toro	2C	133 (54)	14 (6)	0
Orange County, land near O'Neill Regional Park	2D	736 (298)	49 (20)	49 (20)
Orange County, land near Tijeras, Mission Viejo	2E	321 (130)	101 (41)	0
Orange County, Rancho Mission Viejo, land on Chiquita Ridge	2F	489 (198)	263 (106)	0
Orange County, Rancho Mission Viejo, land near Radio Tower Road	2G	736 (298)	417 (169)	0
North San Diego County, State-leased land, Christianitos Creek foothills	2H	566 (229)	47 (19)	0
Riverside County, lands on March ARB	3A	44 (18)	101 (41)	0
	3B	101 (41)		
North coastal San Diego County, land on MCB Camp Pendleton	4A	254 (103)	226 (91)	0
	4B			
North coastal San Diego County, Carlsbad HCP, land near Poinsettia Lane Commuter Station.	4C	143 (58)	22 (9)	22 (9)
South San Diego County, land on western Otay Mesa Sweetwater Union High School District lands.	5A	61 (25)	3 (1)	3 (1)
South San Diego County, southwestern Otay Mesa, federal lands adjacent to the U.S.—Mexico border.	5B	194 (79)	147 (59)	0
South San Diego County, southeastern Otay Mesa, land adjacent to the U.S.—Mexico border.	5C	866 (350)	111 (45)	0

TABLE 1—Continued

Critical Habitat Unit	Sub-unit number: proposed rule	Ac (ha) proposed rule (April 28, 2004)	Essential habitat Ac (ha) final rule	Designated Ac (ha) final rule
Total area designated in final rule				306 (124)

Total size of areas designated as critical habitat or as essential to the conservation of the Riverside fairy shrimp, and areas excluded from the final designation.

TABLE 2

Area determined to be essential to the conservation of the Riverside fairy shrimp	13,913 ac (5,630 ha)
Essential area exempted pursuant to section 4(a)(3) of the Act due to an INRMP that benefits Riverside fairy shrimp: San Diego County, MCAS Miramar and MCB Camp Pendleton (Sub-units 4A and 4B).	3,053 ac (1,236 ha)
Essential area excluded pursuant to section 4(b)(2) of the Act: Completed and pending HCPs in San Diego MSCP, Orange County Central-Coastal NCCP and Western Riverside County MSHCP: Northern San Diego County, Carlsbad HCP (portion of Sub-unit 3A).	9,354 ac (3,785 ha)
Essential area excluded pursuant to section 4(b)(2) of the Act: Impacts to national security on Department of Defense lands: Riverside County, March Air Reserve Base (Sub-unit 3B); San Diego County (Otay Mesa Sub-unit 5B; portion of Sub-unit 5C); San Onofre State Park.	295 ac (119 ha)
Essential area excluded pursuant to section 4(b)(2) of the Act: Impacts to Economy on privately-owned lands within Sub-units 2C (former MCAS El Toro), 2D (Saddleback Meadows portion), 2E (Tijeras Creek), 2F (Chiquita Ridge), 2G (Radio Tower Road), 5C (Southeastern Otay Mesa).	295 (119)
Designated Critical Habitat	306 ac (124 ha)

Approximate designated critical habitat area (ha (ac)) by County and land ownership. Estimates reflect the total area within critical habitat unit boundaries.

TABLE 3

County	Federal*	Local/State	Private	Total
Ventura	0 ac	0 ac	232 ac (94 ha)	232 ac (94 ha)
Orange	0 ac	39 ac (16 ha)	10 ac (4 ha)	49 ac (20 ha)
San Diego	0 ac	25 ac (10 ha)	0 ac	25 ac (10 ha)
Total	0 ac	64 ac (26 ha)	242 ac (98 ha)	306 ac (124 ha)

* Federal lands include Department of Defense, U.S. Forest Service, and other Federal land.

Habitat Conservation Plans (HCPs) and Natural Communities Conservation Program (NCCP) areas within the general area of the designated critical habitat.

TABLE 4

NCCP/HCP	Planning area	Preserve area
San Diego Multiple Species Conservation Program (MSCP)	582,000 ac (236,000 ha)	171,000 ac (69,573 ha)
Central-Coastal Orange County NCCP/HCP	208,713 ac (84,463 ha)	38,738 ac (15,677 ha)
Proposed Northwestern San Diego Multiple Habitat Conservation Program (MHCP)	111,908 ac (45,287 ha)	19,928 ac (8,064 ha)
Proposed Southern Sub-region NCCP/HCP Orange County	128,000 ac (51,800 ha)	14,000 ac (5,666 ha)
Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)	1,260,000 ac (510,000 ha)	153,000 ac (61,919 ha)

The critical habitat unit names are based on the county where the vernal pool complexes occur and their geographic location. For the map sub-units, we used the names for the vernal pool complexes that are commonly given in survey reports or development proposals. These various identifiers allow the public to locate the units in the context of past vernal pool mapping efforts. Past mapping may not correspond to current boundaries of critical habitat. Areas proposed for designation are divided into four different units; we present brief descriptions of all units, and reasons why they are essential for the conservation of the Riverside fairy shrimp, below.

Final Unit 1: Tierra Rejada Valley Critical Habitat

Unit 1 contains approximately 1,045 acres. Its habitat sub-regions include Carlsberg Ranch in Ventura County and Cruzan Mesa in Los Angeles County. One portion of the Carlsberg Ranch sub-region, on the edge of the city of Moorpark, has already been largely developed by Lennar Homes. The southeastern portion, Tierra Rajada, lies between the cities of Thousand Oaks and Simi Valley, with a substantial portion falling in Ventura County lands. Cruzan Mesa is on the northeastern edge of the City of Santa Clarita, and contains a residential development by Pardee Homes. Unit 1 represents that northernmost habitat of the RFS habitat.

The vernal pools in this unit (220 ac (89 ha)) lie within the Transverse Range Management Area. Sub-units 1A and 1B occur in the Tierra Rajada Valley in Ventura County, California (220 ac (89 ha)), and represent the currently known northern limit of occupied habitat for the Riverside fairy shrimp and are among the last remaining vernal pools in Ventura County known to support this species. The areas that are designated as critical habitat in Unit 1 provide the primary constituent elements that support the Riverside fairy shrimp as described above, relating to the pooling basins, watersheds, underlying soil substrate and topography. These lands are considered essential to the conservation of the Riverside fairy shrimp.

The Tierra Rajada Valley Critical Habitat Unit has two sub-units located on either side of the Tierra Rajada Valley basin, near the city of Moorpark, west of Simi in Ventura County. The northern Sub-unit 1A includes portions of land within the City of Moorpark, within the City's designated "Area of Interest" in the Terra Rajada Greenbelt zone. Thus, this sub-unit lies within an

area of land with a formal agreement by the Cities of Moorpark, Thousand Oaks, and Simi Valley, and County of Ventura to be preserved for open space and agricultural uses. Sub-unit 1A contains a large vernal pool in land that was formerly the Carlsberg Ranch. Development has occurred adjacent to this vernal pool, but it is now protected from future development. This pool has been surveyed numerous times, and is characterized as excellent, with 5–10,000 Riverside fairy shrimp recorded within (CNDDDB 1998). Sub-unit 1B is located less than a mile to the south, just across the Tierra Rajada valley basin. This sub-unit has not been surveyed for Riverside fairy shrimp; a number of factors strongly suggest it is likely to occur there, including:

(a) The biotic and abiotic conditions of the sub-unit (*i.e.*, its soil type, geology, morphology, local climate, topography, and occurrence of local vernal pool vegetation, such as California orcutt grass (*Orcuttia californica*)),

(b) The topographic conditions of the sub-unit, which are ideally suited to collect water at the basin center,

(c) The fact that the sub-unit contains several large permanent and semi-permanent pools within its basin,

(d) The fact that the sub-unit is located less than 1 mi (1,500 m) from essential habitat where Riverside fairy shrimp occurrence is known and documented. Because this distance is less than distances between other known occurrences of Riverside fairy shrimp within the same pool complex, which can occur as much as 1.1–1.9 mi (2,000–3,000 m) apart, this pool complex is within the dispersal distance for this species,

(e) The two sub-units are adjoined, on opposite sides, to a large river basin passing between (the Tierra Rejada Valley river system) which may have historically connected the two pools, or dispersed cysts between the two sub-units.

This 74 ha (184 ac) sub-unit contains the primary constituent elements for Riverside fairy shrimp, and is considered essential habitat for the species. The above factors strongly support the likelihood of the species occurring there. This area is currently in private ownership and we are unaware of any plans to develop this site. The preservation and management of vernal pools in both sub-units in the Transverse Range Management Area are also described by the Recovery Plan as essential for the conservation of the Riverside fairy shrimp.

The occurrences of Riverside fairy shrimp in northern Los Angeles County

and in Ventura County (Unit 1 and proposed Sub-units 2A, 2B) represent isolated occurrences at the northernmost extent of the Riverside fairy shrimp's known range. Recent scientific research on desert fishes, a species group similar to the fairy shrimp group in that it is non-mobile and restricted within narrow habitat limits, has found that the risk of extinction among the populations was more closely correlated to range fragmentation than to the number of occurrences (Fagan *et al.* 2004). This emphasizes the importance of protecting populations of the Riverside fairy shrimp throughout as much of its known range as possible, to minimize range fragmentation and thus obtain maximal conservation efficiency.

Conservation biologists have demonstrated that populations at the edge of a species' distribution can be important sources of genetic variation and represent the best opportunity for colonization or re-colonization of unoccupied essential areas and, thus, for the species' long-term conservation (Gilpin and Soulé 1986; Lande 1999). These outlying populations may be genetically divergent from populations in the center of the range and, therefore, may have genetic characteristics that would allow adaptation in the face of environmental change. Such characteristics may not be present in other parts of the species' range (Lesica and Allendorf 1995). Research on the San Diego fairy shrimp has shown that geographically distinct populations in various vernal pools are also genetically distinct from each other, to the extent that individuals within populations may be identified at the individual vernal pool complex level based on their genetic make-up (Bohonak 2003). This is likely to be also true of the Riverside fairy shrimp (Bohonak pers. comm.). The preservation of genetic diversity can greatly aid future conservation and recovery efforts of the species populations throughout its range, as well as provide insight into the evolutionary history of a species. For all of these reasons, the lands identified in Unit 1 are essential for the conservation of the Riverside fairy shrimp.

Proposed Unit 2/Final Unit 2: Los Angeles Basin—Orange Management Area Critical Habitat

In the proposed rule, this unit was comprised of the Los Angeles Basin—Orange Management Area, Los Angeles and Orange Counties, California (3,180 ac (1,287 ha)). This area encompassed two distinct regions where Riverside fairy shrimp are known to occur: in vernal pools in coastal Los Angeles

County, and in vernal pools and vernal pool-like ephemeral ponds located along the foothills of Orange County. These pools are found at the former MCAS El Toro, O'Neill Regional Park which is east of Tijeras Creek at the intersection of Antonio Parkway and the FTC-north segment, and in Rancho Mission Viejo upon Chiquita Ridge and in the Radio Tower Road area, and on lands leased to the California Department of Parks and Recreation by Camp Pendleton. These vernal pools are the last remaining vernal pools in Orange County known to support this species (58 FR 41384). These pools represent a unique type of vernal pool habitat much different from the traditional mimia mound vernal pool complexes. They are also different from coastal pools at MCB Camp Pendleton and the inland pools of Riverside County. The Orange County vernal pool habitat and essential associated watershed represent the majority of Riverside fairy shrimp habitat within the Los Angeles Basin—Orange Management Area discussed in the Recovery Plan. The ephemeral pond on the former MCAS El Toro is within the boundary of the Central—Coastal HCP planning area. With the exception of a portion of habitat on Sub-unit 2D (lands within O'Neill Regional Park), critical habitat for the Riverside fairy shrimp has been excluded under section 4(b)(2) of the Act.

In the southern end of proposed Sub-unit 2D lies O'Neill Regional Park, in the vicinity of Trabuco Canyon, where we have determined to designate approximately 49 ac (20 ha) of habitat considered essential to the conservation of the Riverside fairy shrimp (*Final Unit 2*). This portion of the sub-unit lies at 1,413 ft (431 m), the highest elevation of the occurrences of Riverside fairy shrimp considered in this designation. The habitat consists of several vernal pools surrounded by grassland and coastal sage scrub, and may represent a unique genetic population for this species (CNDDDB 2001). The threats to this area consist of, among others, proposed development projects (e.g., possible expansion of a telecommunications facility, and easement for water and sewer construction). These vernal pools have been included in the O'Neill Regional Park Resource Management Plan by the County of Orange (August 1989), which includes efforts to implement restoration and monitoring plans (for biota species, turbidity, and cattle trespass). These plans include inspection of the vernal pools within the determined sensitive ecological area,

restoration (planting of native vernal pool plant species), removal of invasive plants, protection of the watershed and protection from trampling and other sources of habitat damage within the vicinity of the vernal pools.

Proposed Unit 3: Western Riverside County

No critical habitat has been designated in the Western Riverside County Critical Habitat Unit. In accordance with section 4(b)(2) of the Act, we have excluded lands that are encompassed by the Western Riverside County MSHCP (see Relationship of Critical Habitat to Approved Habitat Conservation Plans). We removed from this critical habitat designation the proposed Sub-unit 3A as the area has been modified and no longer contains the primary constituent elements for the Riverside fairy shrimp. We excluded proposed Sub-unit 3B for national security impacts in accordance with section 4(b)(2) of the Act (see *Relationship of Critical Habitat to Department of Defense Lands, and Application of Section 4(b)(2) to March Air Reserve Base (March ARB)*).

Unit 4: Northern Coastal San Diego County Critical Habitat

Proposed Unit 4/Final Unit 3: Northern Coastal San Diego County Critical Habitat

Approximately 397 ac (161 ha) of habitat were proposed for designation in San Diego County, and included some of the vernal pools found on MCB Camp Pendleton as well as the Poinsettia Lane Train Station vernal pool area in the City of Carlsbad.

The Coastal Northern San Diego County Unit in this final rule consists of a vernal pool complex located on coastal terraces. This unit (8 ac (3 ha), map Sub-unit 4C in the proposed rule) is located along the railroad right-of-way at the Poinsettia Lane Commuter Station and supports populations of the Riverside fairy shrimp. These populations represent the last remnant of the historic distribution of vernal pool on coastal terraces in San Diego County and the northernmost occurrences of the Riverside fairy shrimp within San Diego County (not including MCB Camp Pendleton). As a result of coastal development, the Coastal Northern San Diego County Unit represents the only remnant of the historic distribution of vernal pools supporting the Riverside fairy shrimp along the coastal terraces in San Diego County.

The highly limited distribution and fragmentation of vernal pools on coastal

terraces suggests that these populations may be genetically distinct from other populations of the Riverside fairy shrimp as indicated by recent genetic studies that document unique haplotypes between geographically separated populations of the San Diego fairy shrimp (Bohonak 2004). This unit provides space for individual and population growth and reproduction; the soils and surrounding uplands provide food, water, light, minerals, and other nutritional and physiological requirements, and represent the historical geographic distribution of the San Diego fairy shrimp.

The majority of the vernal pool complex along the railroad right-of-way at the Poinsettia Lane Commuter Station is now in a conservation easement managed by the California Department of Fish and Game (CDFG). The lands are owned by the North County Transit District. CDFG is currently in the process of developing a long-term management plan for this area to control non-native weeds and maintain the hydrology of the site. The portion of this vernal pool complex excluded from critical habitat is part of the North San Diego MHCP. Originally included in the proposed rule, the Cocklebur Sensitive Area and other areas on or controlled by MCB Camp Pendleton (proposed map Sub-units 4A and 4B) are exempted from the final designation of critical habitat for the Riverside fairy shrimp under section 4(a)(3) of the Act. For more details, see the sections *Relationship of Critical Habitat to Department of Defense Lands and Relationship of Critical Habitat to Approved Habitat Conservation Plans* below.

Proposed Unit 5/Final Unit 4: South San Diego County Critical Habitat

In the proposed rule, Unit 5 contained 1,120 acres proposed for designation, all located in the City or County of San Diego. Some of this land is located in the federally owned area known as Arnie's Point along the border with Mexico, and most of the remainder is in East Otay Mesa, an area of major commercial and residential growth. Unit 5 is the southernmost extent of the Riverside fairy shrimp habitat in the U.S.

The vernal pool complexes in this critical habitat map unit are located within a Major/Minor Amendment area within the San Diego MSCP. While these areas are within the San Diego MSCP, Major/Minor Amendment areas do not currently have approved plans that provide conservation measures for the Riverside fairy shrimp. The vernal pool complexes in this unit represent

the southernmost extent of the Riverside fairy shrimp within the United States. Pools on Otay Mesa are considered San Diego claypan vernal pools. The vernal pool complexes in this unit are the only vernal pools on Huerfuerlo loam and Linné clay loam in this critical habitat designation. This unit is essential in preserving the genetic diversity of this species and in maintaining the historic range of this species. The majority of vernal pool complexes on Otay Mesa have been severely degraded by numerous activities, including agricultural development, trash-dumping, and vehicle and human traffic, and many pools have been destroyed and removed due to industrial development in the area. This southernmost section is essential to the conservation of the Riverside fairy shrimp because it maintains the ecological distribution and genetic diversity of this species. No Department of Homeland Security lands along the U.S.-Mexico border are designated as critical habitat in this final rule and we have excluded all other lands within Subunit 5C from critical habitat based on section 4(b)(2) of the Act.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify designated critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species and are relying on the statutory provisions of the Act in evaluating the effects of Federal actions on designated critical habitat, pending further regulatory guidance.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.12, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. “Reasonable and prudent alternatives” are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency’s legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical

habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request re-initiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Riverside fairy shrimp or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration or Federal Emergency Management Agency), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted are not subject to section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the Riverside fairy shrimp. Federal activities that, when carried out, may adversely affect critical habitat for the Riverside fairy shrimp include, but are not limited to:

(1) Actions that would permanently alter the function of the underlying claypan or hardpan soil layer to hold and retain water. This would affect the duration and extent of inundation, water temperature and chemistry, and other vernal pool features beyond the tolerances of the Riverside fairy shrimp. Damage or alternation of the claypan or hardpan soil layer would eliminate the function of this PCE for providing space for individual and population growth and for normal behavior; water and physiological requirements; and sites for breeding, reproduction and rearing of offspring. Actions that could permanently alter the function of the underlying claypan or hardpan soil layer include, but are not limited to, grading or earthmoving work that disrupts or rips into the claypan or

hardpan soil layer; or and channelizing, mining, dredging, or drilling into the claypan or hardpan soil layer.

(2) Actions that would permanently reduce the depth of a vernal pool, and the ability of a vernal pool to pond with water, the duration and extent of inundation, water temperature and chemistry, and other vernal pool features beyond the tolerances of the Riverside fairy shrimp. Reducing the depth of the vernal pool would eliminate the function of this PCE for providing space for normal behavior and for individual and population growth, water and physiological requirements, sites for breeding, reproduction and rearing of offspring, and reduce the time available for growth and reproduction as it would accelerate the pool's drying phase. Actions that could permanently reduce the depth of the vernal pool include, but are not limited to, discharge of dredged or fill material into vernal pools and erosion of sediments from fill material, disturbance of soil profile by grading, ditch digging in and around vernal pools, earthmoving work, OHV use, grazing, vegetation removal, or construction of roads, culverts, berms or any other impediment to natural sub-surface or surface hydrological flow within the watershed for the vernal pools. These activities should be carefully planned with hydrology studies and monitored because both increases and decreases to ponding duration can have negative impacts to the Riverside fairy shrimp's ability to persist.

(3) Actions that would substantially alter vernal pool water chemistry to exceed the levels discussed in the "Primary Constituent Elements" section. Exceeding these water chemistry parameters would eliminate the function of this PCE for maintaining the water and physiological requirements of the vernal pool habitat for the Riverside fairy shrimp, and beyond the species' tolerances. Actions that could substantially alter vernal pool water chemistry include, but are not limited to, erosion from fill material or soils disturbed by grading within the watershed for the vernal pools, discharge of dredged or fill material into vernal pools, removal of the clay soils underlying vernal pools, and release of chemicals or pollutants.

(4) Actions that would substantially alter vernal pool water temperatures to exceed temperature ranges beyond those discussed in the "Primary Constituent Elements" section when juvenile and adult Riverside fairy shrimp are present. Exceeding these water temperature parameters would eliminate the

function of this PCE for maintaining the water and physiological requirements of the vernal pool habitat for the Riverside fairy shrimp, and beyond the species' tolerances. Actions that could substantially alter vernal pool water temperature include, but are not limited to, discharge of heated effluents into the surface water or by dispersed release (non-point source).

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

All lands designated as critical habitat are within the geographical area occupied by the species and are necessary to preserve functioning vernal pool habitat for the Riverside fairy shrimp. Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation, although there may be consultations that result from Federal actions within critical habitat in the watersheds associated with vernal pools.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Application of Section 4(a)(3) of the Act—Approved and Completed INRMPs

The Sikes Act Improvements Act of 1997 (Sikes Act) (16 U.S.C. 670a) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP combines implementation of the military mission of the installation with stewardship of its natural resources. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management

plan. We consult with the Department of Defense on the development and implementation of INRMPs for installations with federally listed species.

Section 318 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to address the relationship of INRMPs to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits us from designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

In our April 27, 2004 rule, we proposed critical habitat for the Riverside fairy shrimp for areas containing essential habitat, but not considered mission-critical at MCB Camp Pendleton. We also considered, but did not propose, critical habitat for the Riverside fairy shrimp on mission-essential training areas at MCB Camp Pendleton and at MCAS Miramar (69 FR 23024). For this final rule, we re-evaluated both our exclusions and our proposed designations on MCB Camp Pendleton and on MCAS Miramar based on the completion of their INRMPs, which address the conservation of the Riverside fairy shrimp. We have therefore exempted all areas on MCB Camp Pendleton and on MCAS Miramar from the final critical habitat designation pursuant to section 4(a)(3) of the Act.

Relationship of Critical Habitat to Department of Defense Lands

We received comments regarding the proposed critical habitat designation and economic impact on Department of Defense lands from the Navy at MCB Camp Pendleton and the former MCAS El Toro, and from the Air Force at March ARB. To ensure that the Department of Defense could comment on the proposed rule and its relationship to section 4(a)(3) of the Act, as amended, we specifically requested information from the Department of Defense regarding MCB Camp Pendleton's INRMP to determine if the INRMP provides a benefit to the Riverside fairy shrimp in the proposed rule published on April 27, 2004 (69 FR 23024).

Application of Section 4(a)(3) to MCB Camp Pendleton (Sub-Units 4A, B)

Camp Pendleton completed their INRMP in November 2001, which

includes the following conservation measures for the Riverside fairy shrimp: (1) Surveys and monitoring, studies, impact avoidance and minimization, and habitat restoration and enhancement, (2) species survey information stored in MCB Camp Pendleton's GIS database and recorded in a resource atlas which is published and updated on a semi-annual basis, (3) application of a 984 ft (300 m) radius to protect the micro-watershed buffers around current and historic Riverside fairy shrimp locations, and (4) use of the resource atlas to plan operations and projects to avoid impacts to the Riverside fairy shrimp and to trigger section 7 consultations if an action may affect the species (R.L. Kelly, in lit. 2003). These measures are established, ongoing aspects of existing programs and/or Base directives (e.g., Range and Training Regulations) or measures that will be implemented when the current section 7 consultation for upland species (Uplands Consultation), including the Riverside fairy shrimp, is completed.

Camp Pendleton implements Base directives to avoid and minimize adverse effects to the Riverside fairy shrimp, such as: (1) Bivouac, command post, and field support activities should be no closer than 984 ft (300 m) to occupied Riverside fairy shrimp habitat year round, (2) limiting vehicle and equipment operations to existing road and trail networks year round, and (3) requiring environmental clearance prior to any soil excavation, filling, or grading. MCB Camp Pendleton has also demonstrated ongoing funding of their INRMP and management of endangered and threatened species. In Fiscal Year 2002, MCB Camp Pendleton spent approximately \$1.5 million on the management of federally listed species. In Fiscal Year 2003, MCB Camp Pendleton expended over \$5 million to fund and implement their INRMP, including management actions that provided a benefit for the Riverside fairy shrimp. Moreover, in partnership with the Service, MCB Camp Pendleton is funding two Service biologists to assist in implementing their Sikes Act program and buffer lands acquisition initiative.

Based on MCB Camp Pendleton's past funding history for listed species and their Sikes Act program (including the management of the Riverside fairy shrimp), we believe there is a high degree of certainty that MCB Camp Pendleton will implement the INRMP in coordination with the California Department of Fish and Game and with the Service in a manner that provides a benefit to the Riverside fairy shrimp. We

also believe that there is a high degree of certainty that the conservation efforts of their INRMP will be effective. Service biologists work closely with MCB Camp Pendleton on a variety of endangered and threatened species issues, including the Riverside fairy shrimp. The management programs and Base directives to avoid and minimize impacts to the species' are consistent with current and ongoing section 7 consultations with MCB Camp Pendleton.

We are also in the process of completing a section 7 consultation for upland species on MCB Camp Pendleton. Vernal pools and associated species, including the Riverside fairy shrimp, are addressed in the "Uplands Consultation." When this consultation is completed, MCB Camp Pendleton will incorporate the conservation measures from the biological opinion into their INRMP. At that time, MCB Camp Pendleton's INRMP will provide further benefits to the Riverside fairy shrimp. Therefore, we find that the INRMP for MCB Camp Pendleton provides a benefit for the Riverside fairy shrimp and are exempting from critical habitat lands on MCB Camp Pendleton pursuant to section 4(a)(3) of the Act.

Application of Section 4(a)(3) to MCAS Miramar

We reaffirm our exemption of MCAS Miramar under section 4(a)(3) of the Act. MCAS Miramar completed a final INRMP in May 2000 that provides for conservation, management and protection of the Riverside fairy shrimp. The INRMP is in place and is being implemented. With regard to the Riverside fairy shrimp, the INRMP classifies nearly all of the vernal pool basins and watersheds on MCAS Miramar as a Level I Management Area. A Level I Management Area receives the highest conservation priority within the INRMP. Preventing damage to vernal pool resources is the highest conservation priority in MAs with the Level I designation. The conservation of vernal pool basins and watersheds in a Level I Management Area is achieved through education of base personnel, proactive measures to avoid accidental impacts, including signs and fencing, developing procedures to respond to and fix accidental impacts on vernal pools, and maintenance of an updated inventory of vernal pool basins and associated vernal pool watersheds.

Since the completion of MCAS Miramar's INRMP, we have received reports on their vernal pool monitoring and restoration program, and correspondence detailing the installation's expenditures on the

objectives outlined in its INRMP. MCAS Miramar continues to monitor and manage its vernal pool resources. Ongoing programs include a study on the effects of fire on vernal pool resources, vernal pool mapping and species surveys, and a study of Pacific bentgrass (*Agrostis avenaceae*), an invasive nonnative grass found in some vernal pools on MCAS Miramar. Based on the value MCAS Miramar's INRMP assigns to vernal pool basins and watersheds, and the management actions undertaken conserve them, we find that the INRMP provides a benefit for the Riverside fairy shrimp. In accordance with section 4(a)(3) of the Act, MCAS Miramar is exempted from critical habitat designation for the Riverside fairy shrimp.

Application of Section 4(b)(2) of the Act—National Security

Application of Section 4(b)(2) National Security to March Air Reserve Base (Sub-Unit 3B)

March Air Reserve Base (March ARB) is an Air Force Command installation that includes runways, hangars, aircraft parking aprons, taxiways, administrative facilities, billeting facilities, associated road network, landscape areas, and open areas associated with runway threshold and lateral clear zones. March ARB hosts the 452nd Air Mobility Wing and supports an Air National Guard Wing, Headquarters 4th Air Force, and other military and civilian organizations. The 452nd Air Mobility Wing is the primary air mobility organization for supporting the 1st Marine Expeditionary Force for worldwide contingency operations. The Air National Guard Wing includes the 163d Air Refueling Wing and 120th Fighter Wing. March ARB also supports the Department of Homeland Security Riverside Aviation Unit.

(1) Benefits of Inclusion

The primary benefit of designating critical habitat is that Federal agencies would have to consult with us on projects they carry out, fund, or authorize to ensure such activities do not adversely modify or destroy designated critical habitat. Absent the designation of critical habitat, Federal agencies must still consult with us if they determine an action may affect a federally listed species to ensure those actions will not jeopardize the species. We already consult with March ARB on actions that may affect listed species, including the Riverside fairy shrimp. Because protection of vernal pool habitat is key to avoiding jeopardy to the Riverside fairy shrimp, we carefully

consider the effects on habitat in our evaluation of impacts to the species.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has been achieved, as both the military and civilian managers and users of the area are fully familiar with the existence and needs of the shrimp. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

Under the Gifford Pinchot decision, the designation of critical habitat may provide greater benefits to the recovery of the species than previously believed. However, at this point, it is not possible to quantify that benefit.

In summary, we believe that this proposed unit as critical habitat would provide little additional federal regulatory benefits for the species. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are accomplished.

(2) Benefits of Exclusion

In contrast to the absence of a significant benefit resulting from designating critical habitat for the Riverside fairy shrimp at March ARB, there are substantial benefits to excluding this area from critical habitat. If critical habitat were to be designated on this land the Air Force could be compelled to re-initiate consultations with us under section 7 of the Act on activities that have previously been reviewed but have not yet been implemented, in order to address whether the proposed activities may affect designated critical habitat. In addition, they would be required to consult over possible effects from future activities on the critical habitat. The additional burden of initiating and reinitiating consultations could impede the timely conduct of mission-essential training activities and impair the ability of the Air Force to fully achieve its mission. Moreover, our final Economic Analysis has determined that there could be additional costs of \$33 million, including an additional \$950,000 for an Environmental Impact Statement to be completed for March ARB to maintain operations of its runway and taxiways. A California Air National Guard heavy

equipment unit would require relocation, costing \$31.5 million.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion in Critical Habitat

Because of the relatively limited benefits arising from designation, we believe the role played in supporting overseas Marine Corps operations and the related importance to national security of ensuring March ARB's ability to maintain a high level of military readiness, and the additional cost impacts identified in our economic analysis, we believe the benefits of exclusion outweigh the benefits of inclusion and have excluded this facility pursuant to section 4(b)(2) of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp must undergo a consultation with the Service under the requirements of section 7 of the Act. The species is protected from take under section 9 of the Act. The exclusions leave these protections unchanged. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Leased Lands at Marine Corps Base Camp Pendleton (San Onofre State Park)—Exclusions Under Section 4(b)(2)

The Marine Corps operates Camp Pendleton as an amphibious training base that promotes the combat readiness of military forces and is the only West Coast Marine Corps facility where amphibious operations can be combined with air, sea, and ground assault training activities year-round. Currently, the Marine Corps has no alternative installation available for the types of training that occur on Camp Pendleton.

The Marine Corps leases some of the land at Camp Pendleton to the State of California for use as San Onofre State Park. In their comments on the proposed critical habitat for the Riverside fairy shrimp, the Marines noted the adverse impacts to their training abilities which they believe have resulted from various environmental laws, with the Act foremost among these, and provide a study to support their contention. While their comments and the study focused primarily on lands currently used for training, and they supported the Service's stated intent to exempt "mission-critical" areas under sections 4(a)(3) or 4(b)(2), they also stated

"simply because some areas of the Base may not be designated as a range or training area, * * * such areas should not be presumed to be unimportant or not useful to support training actions, either today or in the future." In the same letter (Bowdon, May 2004, in litt.) the Commanding General said: "In particular, both the Commandant of the Marine Corps and I have personally expressed deep concerns that the designation of critical habitat aboard Camp Pendleton would impose long term, cumulative and detrimental impacts on the capabilities of the base to perform its military mission, * * *".

The San Onofre State Park lands are potential training lands that are not covered by the other exemptions provided to Camp Pendleton lands, as they are managed by the State and not covered by the base's INRMP. Based on the comments from the Corps, we are excluding these lands, consisting of approximately 47 acres, on national security grounds, so they could be available quickly to the Marines in the event they were needed for military training.

(1) Benefits of Inclusion

The primary benefit of any critical habitat with regard to activities that require consultation pursuant to section 7 of the Act is to ensure that the activity will not destroy or adversely modify designated critical habitat. However, since this land is managed by the State of California, it is not open to development and is subject to the protective laws and regulations applicable to the State Parks. The educational benefits of critical habitat include informing the Marine Corps and the State of California of areas that are important to the conservation of listed species. However, we are confident both are now aware of this. As long as the land is managed by the State of California, there is not likely to be a Federal nexus which would trigger consultation with us should critical habitat be designated. Therefore, we do not believe that designation of this area as critical habitat will appreciably benefit the shrimp beyond the protection already afforded the species under the Act.

(2) Benefits of Exclusion

In contrast to the absence of an appreciable benefit resulting from designation of these lands as critical habitat, there is a benefit to excluding them through avoidance of delay should the Corps need the land for military purposes. The Corps' lease agreement with the State provides that the land can be reclaimed with a 90-day notice, and

if urgently needed for military purpose, the reversion might well be more rapid. However, if the land were designated as critical habitat, the requirement to consult on activities to be conducted there could delay and impair the ability of the Marine Corps to conduct effective training activities and limit Camp Pendleton's utility as a military training installation. We already have consultations with them under section 7 on activities related to the presence of the shrimp, as a result of which we could likely do a consultation related to jeopardy very quickly. However, there has been no consultation on critical habitat for the species, and under the new standard for adverse modification that may result from the Gifford Pinchot decision there is no reason to believe this could be done quickly.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the current world situation, the Marine Corps' need to maintain a high level of readiness and fighting capabilities, and the possible impact on national security if that is obstructed, we believe the benefits of excluding these lands outweigh the benefits of including them.

(4) Exclusion Will Not Result in Extinction of the Species

Because the lands are occupied by the species and the Marine Corps has a statutory duty under section 7 to ensure that its activities do not jeopardize the continued existence of the shrimp, we find that the exclusion of these areas will not lead to the extinction of the Riverside fairy shrimp.

Application of Section 4(b)(2) National Security to U.S. Department of Homeland Security Lands (Sub-Unit 5B and Portions of 5C)

In our previous (69 FR 23024) rule, we proposed to designate as critical habitat lands adjacent to the U.S.-Mexico border under the jurisdiction of the U.S. Department of Homeland Security (DHS), U.S. Border Patrol, San Diego Sector (Sub-unit 5B, portion of Sub-unit 5C). The portion of the lands owned by the DHS that are directly adjacent to the U.S.-Mexico border lands have previously been disturbed and developed by the ongoing construction of the Border Infrastructure System (BIS), and those lands within the constructed portion of the footprint of the BIS do not contain any of the primary constituent elements for the Riverside fairy shrimp. The BIS is considered integral to national security, and therefore, lands owned by DHS along the U.S.-Mexico border have been

excluded from the designation under section 4(b)(2) of the Act for national security impacts.

On February 6, 2002, the Service completed a section 7 consultation with the U.S. Army Corps of Engineers (Corps) and the former Immigration and Naturalization Service on the effects of closing a gap in the Border Fence Project's secondary fence at Arnie's Point on three endangered species occurring there, the Riverside fairy shrimp, San Diego fairy shrimp, and San Diego button-celery (*Eryngium aristulatum* var. *parishii*; Service 2002). We concluded in our biological opinion that the proposed action, which includes the loss of a linear vernal pool occupied by both the Riverside fairy shrimp and San Diego fairy shrimp, was not likely to jeopardize the continued existence of the three endangered species. On January 9, 2003, the Service completed a section 7 consultation with the former Immigration and Naturalization Service of the effects on the endangered Riverside fairy shrimp and endangered San Diego fairy shrimp from the construction of a secondary border fence and other road and fencing improvements in Area II along the U.S.-Mexico border (Service 2003). We concluded in our biological opinion that the proposed action, which included the loss of three vernal pool basins, was not likely to jeopardize the continued existence of the Riverside fairy shrimp and San Diego fairy shrimp. To offset losses for fairy shrimp, the DHS has conducted two restoration projects and has designated some DHS-owned lands located north of the BIS (at Arnie's Point) as mitigation for completion of the border system. As part of the proposed actions for these two section 7 consultations, DHS committed to implement a variety of conservation measures that would restore and create vernal pool habitats and enhance their watershed, including the commitment to transfer these lands to a conservation resource agency and/or to protect and conserve the lands in perpetuity. We have therefore determined to exclude this area, which contains the remainder of lands within Sub-unit 5B, from the critical habitat designation according to 4(b)(2) of the Act for national security.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the Riverside fairy shrimp that are already managed for the conservation of vernal pool habitat. One possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation value of these areas and the vernal pool complex

they support. However, critical habitat designation provides little gain in the way of increased recognition on lands that are expressly managed to protect and enhance vernal pools for San Diego fairy shrimp. In addition, the Service has already thoroughly evaluated the impacts of the BIS project on the Riverside fairy shrimp and its vernal pool habitat, determined that the project will not jeopardize the continued existence of the species, and received commitments from INS (now DHS) for restoration, protection and management of nearby Riverside fairy shrimp habitat. Therefore, we believe the designation of areas covered by the project and restoration areas would provide little benefit to the species.

(2) Benefits of Exclusion

The exclusion of the DHS-owned land within the BIS footprint will remove any delay in the BIS project occasioned by the need to reinitiate consultation. Expedient completion of the BIS project is vital to our country's national security. Exclusion of the restoration areas will also remove any regulatory delay associated with completion of this important habitat restoration project.

(3) Benefits of Exclusion Outweigh Benefits of Inclusion

We conclude that the minimal benefits of designating critical habitat on the BIS project lands, including the 21.8-ac vernal pool restoration area, are far outweighed by the substantial benefits to national security from early completion of this project. Therefore we are excluding the BIS lands within Sub-unit 5B under section 4(b)(2) of the Act (see *Relationship of Critical Habitat to Approved Habitat Conservation Plans* below). The remaining area within Sub-unit 5B and some lands within Sub-unit 5C owned by the DHS are within the constructed BIS footprint and no longer contain any vernal pool habitat for the Riverside fairy shrimp; those impacts have been offset by the conservation measures to be implemented by DHS at the 21.8-acre vernal pool restoration area at Arnie's Point. Thus, the remaining lands within Sub-unit 5B and some lands within Sub-unit 5C owned by the DHS are not essential to the conservation of the Riverside fairy shrimp and are not designated as critical habitat in this final rule. Thus, no lands owned by the Department of Homeland Security have been designated as critical habitat.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the

species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of sec. 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species. Moreover, at Arnie's Point, the DHS is restoring habitat for the Riverside fairy shrimp and will transfer that land to a MSCP cooperating agency.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

This section allows the Secretary to exclude areas from critical habitat for economic reasons if she determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat. Exclusions under this section for non-economic reasons are addressed above.

In general, we have considered in making the following exclusions that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the area, due to the fact that the areas in question are currently occupied by the Riverside fairy shrimp and there will be requirements for consultation under Section 7 of the Act, or for permits under section 10 (henceforth "consultation"), for any take of the species, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In addition, some areas are also occupied by other listed species and in some cases are designated as critical habitat for those species. In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico

Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, "regardless of whether those impacts are attributable co-extensively to other causes." As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis which may overstate some costs.

Conversely, the 9th Circuit has recently ruled ("Gifford Pinchot", 378 F.3d at 1071) that the Service's regulations defining "adverse modification" of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The court directed us to consider that adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, changing the adverse modification definition to respond to the Court's direction may result in additional costs associated with critical habitat definitions (depending upon the outcome of the rulemaking). This issue was not addressed in the economic analysis for the Riverside fairy shrimp, as this was well underway at the time the decision was issued and we have a court-ordered deadline for reaching a final decision, so we cannot quantify the impacts at this time. However, it is a factor to be considered in evaluating projections of future economic impacts from critical habitat.

We recognize that we have excluded a significant portion of the proposed critical habitat. Congress expressly contemplated that exclusions under this section might result in such situations when it enacted the exclusion authority. House Report 95-1625, stated on page 17:

"Factors of recognized or potential importance to human activities in an area will be considered by the Secretary in deciding whether or not all or part of that area should be included in the critical habitat * * * In some situations, no critical habitat would be specified. In such situations, the Act would still be in force to prevent any taking or other prohibited act * * *"

We accordingly believe that these exclusions, and the basis upon which they are made, are fully within the parameters for the use of section 4(b)(2) set out by Congress.

Application of Section 4(b)(2) Economic Exclusion to Former MCAS El Toro (Sub-Unit 2C)

We have excluded all of proposed Sub-unit 2C, consisting of approximately 133 ac (54 ha; with 14 ac

(6 ha) of essential habitat) at the former MCAS El Toro in Orange County, under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled "Effects of Critical Habitat Designation." However, since the species is present, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required even without the critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would be \$56.7 million. By excluding this unit, some or all of those costs will be avoided.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat. We also note that the management plans to acquire land off-site, restore vernal pools there, relocate the species to these pools, initiate biological monitoring, and provide for project management.

Designating critical habitat would impose a disincentive for this type of conservation efforts, and add to the costs. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Application of Section 4(b)(2) Economic Exclusion to Saddleback Meadows and Other Private Lands (Portion of Sub-Unit 2D)

We have excluded the Saddleback Meadows and other private lands within

portion of proposed Sub-unit 2D, consisting of approximately 736 ac (298 ha) with 57 ac (23 ha) of essential habitat near O'Neill Regional Park, under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled "Effects of Critical Habitat Designation." However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required even without the critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the

development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would range between over \$10 million to nearly \$60 million, largely as loss of land value and increased costs to private landowners. These costs range from \$14,000 and \$79,000 per acre. The variability in the impact encompasses a low to high amount of required set aside acreage that depends on vernal pool site geometry, requirements of land use regulations, and planned uses of the site. By excluding this unit, some or all of those costs will be avoided.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that there be no adverse modification resulting from Federally-related actions. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In

addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

The Service completed a section 7 consultation with the Corps on October 26, 2001 on the impacts of the proposed Saddleback Meadows Residential Development Project (Service 2001). With reference to this critical habitat designation, the consultation addressed the effects of proposed residential development project, on the federally endangered Riverside fairy shrimp and its proposed critical habitat. The project entails a 283-unit residential development on approximately 128 ac within the 225 ac Saddleback Meadows site, in the Foothill Trabuco Specific Plan area of Orange County, and proposed to fill three unbreached vernal pools, and two breached ponds, of the total nine pools in the area that are known to contain Riverside fairy shrimp. Approximately 97 ac of biological open space will be established by the project, including native habitat restoration on areas of the surrounding slopes.

In evaluating the management plan that covers 97 ac of biological open space, we determined that the biological open space area provided by the proposed Saddleback Meadows Residential Development Project would be adequately managed, *i.e.*, the plan or agreement would provide conservation benefits to the species. This is ensured by the following conservation measures to be implemented as part of the proposed action to mitigate impacts and minimize potential adverse effects of the proposed project. These measures include plans to preserve four pools within the open space area, and to create four ephemeral pools onsite to which Riverside fairy shrimp would be introduced (using cysts from impacted vernal pools). Approximately one-fifth of the salvaged soil and cysts will be placed in storage at the San Diego Zoological Society's Center for the Reproduction of Endangered Species until the ponds have met predetermined success criteria. Further, the implementation of a 10-year fairy shrimp pond creation, maintenance and monitoring plan includes success criteria for establishing viable fairy shrimp populations and the hydrology necessary to support them in the created ponds, and measures to ensure avoidance of irrigation water entering

the vernal pools and ponds. Reasonable assurances that the management plan will be implemented are provided by the requirement that the proposed project proponent execute and record an irrevocable offer to dedicate over 97 ac of biological open space, including avoided and created pools and their watersheds, accompanied by a perpetual conservation easement for biological conservation purposes. Reasonable assurances that the conservation effort will be effective are given through the Service and Corps-approved plans mentioned above for perpetual maintenance and monitoring, and the non-wasting endowment that will be established to finance it. Further, the easement will state that no other easements, modifications or other activities which would result in disturbance to the pools or their PCEs would be allowed within the biological conservation easement area.

In sum, we believe that these conservation measures identified in the consultation, including the dedication of 97.4 acres of biological open space (including the avoided and created fairy shrimp ponds and their watersheds) and the management, maintenance, and monitoring plans and funding to implement the plans, would provide a conservation benefit to the Riverside fairy shrimp.

Application of Section 4(b)(2) Economic Exclusion to Lands Near Tijeras Creek (Proposed Sub-Unit 2E)

We have excluded all of proposed Sub-unit 2E, consisting of approximately 321 ac (130 ha) with approximately 101 ac (41 ha) of essential habitat near Tijeras Creek, Mission Viejo, under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled "Effects of Critical Habitat Designation." However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required even without the

critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would range from over \$5 million to over \$30 million, largely as loss of land value and increased costs to private landowners. These costs could exceed \$90,000 per acre. The variability in the impact encompasses a low to high amount of required set aside acreage that depends on vernal pool site geometry, requirements of land use regulations, and planned uses of the site. By excluding this unit, some or all of those costs will be avoided.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as

discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that there be no adverse modification resulting from Federally-related actions. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Application of Section 4(b)(2) Economic Exclusion to Chiquita Ridge (Sub-Unit 2F)

We have excluded all of Sub-unit 2F, consisting of approximately 489 ac (198 ha) and containing approximately 263 ac (106 ha) of essential habitat near Chiquita Ridge, Mission Viejo, under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The areas excluded are currently occupied by the species. If these areas

were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled “Effects of Critical Habitat Designation.” However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of “harm” at 50 CFR 17.3) would be required even without the critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would range from nearly \$8 million to nearly \$45 million, largely as loss of land value and increased costs to private landowners. These costs range from nearly \$16,000 to \$89,000 per acre. The variability in the impact encompasses a low to high amount of required set aside

acreage that depends on vernal pool site geometry, requirements of land use regulations, and planned uses of the site. By excluding this unit, some or all of those costs will be avoided.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that there be no adverse modification resulting from Federally-related actions. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Application of Section 4(b)(2) Economic Exclusion to Lands Near Radio Tower Road (Sub-Unit 2G)

We have excluded all of Sub-unit 2G, near Radio Tower Road in Mission Viejo, consisting of approximately 736 ac (298 ha) and containing approximately 417 ac (169 ha) of essential habitat, under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled "Effects of Critical Habitat Designation." However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required even without the critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it.

The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would range from \$8 million to nearly \$45 million, largely as loss of land value and increased costs to private landowners. These costs range from \$14,000 and \$79,000 per acre. The variability in the impact encompasses a low to high amount of required set aside acreage that depends on vernal pool site geometry, requirements of land use regulations, and planned uses of the site. By excluding this unit, some or all of those costs will be avoided.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that there be no adverse modification resulting from Federally-related actions. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act. The shrimp is

protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Application of Section 4(b)(2) Economic Exclusion to Southeastern Otay Mesa (Sub-Unit 5C)

We have excluded the remainder of Sub-unit 5C, approximately 866 ac (350 ha), and containing approximately 111 ac (45 ha) of essential habitat at Otay Mesa, under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled "Effects of Critical Habitat Designation." However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required even without the critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise

from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would range from \$5 million to \$31 million, largely as loss of land value and increased costs to private landowners. The variability in the impact encompasses a low to high amount of required set aside acreage that depends on vernal pool site geometry, requirements of land use regulations, and planned uses of the site.

In addition, landowners in this proposed unit have already incurred approximately \$42 million in costs and loss of value as a result of the listing of the Riverside fairy shrimp. Moreover, the analysis showed that, given RFS-related conservation activities, San Diego County may have produced 3,700 fewer housing units, or 4.4 percent of the total built, over the 12-year time period since listing, and that the level of supply reductions in San Diego County suggest that the real estate market and housing prices may have been affected. It found that additional consumers and producers were and are likely affected by the changes in price and quantity, and the magnitude of the total impacts in this instance would surpass the landowner-only cost figures cited above.

Although the analysis considered all of proposed unit in its entirety, it seems clear that the economic impacts to landowners will largely arise from the Sub-unit 5C. Sub-unit 5A (61 ac (25 ha)) is owned by the Sweetwater Union High School District, and Sub-unit 5B by the DHS (see *Application of Section 4(b)(2) National Security to U.S. Department of Homeland Security Lands* above); real estate development is not a likely event

on either set of lands. By excluding Sub-unit 5C, we will avoid some or all of these additional costs to those already incurred by affected landowners. The remaining lands within Subunit 5A are conserved as part of a section 7 consultation and are not available for future residential development.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, on top of the extensive costs they have already incurred, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that there be no adverse modification resulting from Federally-related actions. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)

We have excluded lands within habitat conservation plans under section 4(b)(2) of the Act. The analysis which led us to the conclusion that the benefits of excluding this area exceed the benefits of designating it as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled "Effects of Critical Habitat Designation." However, inasmuch as this area is currently occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required even without the critical habitat designation and without regard to the existence of a Federal nexus.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved. As explained above, this is the 2nd iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. Therefore, we believe the education benefits which might arise from a critical habitat designation here have largely already been generated.

In summary, we believe that this proposed unit as critical habitat would provide little additional Federal regulatory benefits for the species. Under the Gifford Pinchot decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present. Because the proposed critical habitat is occupied by the species, there must be consultation with the Service over any action which might impact it. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and

comments which accompanied the development of this regulation, and publicity over the prior litigation.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would range from over \$5 million to over \$30 million, largely as loss of land value and increased costs to private landowners. These costs could exceed \$90,000 per acre. The variability in the impact encompasses a low to high amount of required set aside acreage that depends on vernal pool site geometry, requirements of land use regulations, and planned uses of the site. By excluding this unit, some or all of those costs will be avoided.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of avoiding the potential economic costs which could result from including those lands in this designation of critical habitat.

We also believe that excluding these lands, and thus helping landowners and water users avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-Gifford Pinchot environment—which requires only that there be no adverse modification resulting from Federally-related actions. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered occupied habitat. Any actions which might adversely affect the shrimp, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of sec. 7 of the Act. The shrimp is protected from take under section 9. The exclusions leave these protections unchanged from those which would exist if the excluded areas were

designated as critical habitat. In addition, as discussed above, there are a substantial number of Habitat Conservation Plans and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. Some areas occupied by, and determined to be essential to, the Riverside fairy shrimp involve complex HCPs that address multiple species, cover large areas, and have many participating permittees. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs address impacts within the plan's boundaries area and create a preserve design within the planning area. Over time, areas in the planning area are developed according to the HCP, and the area within the preserve is acquired, managed, and monitored. These HCPs are designed to implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP, in order to reduce delays in the permitting process.

In the case of approved regional HCPs (e.g., those sponsored by cities, counties, or other local jurisdictions)

wherein the conservation of the Riverside fairy shrimp is addressed, a primary goal is to provide for the protection and management of habitat essential for the conservation of the Riverside fairy shrimp while directing development to non-essential areas. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Riverside fairy shrimp. The regional HCP planning process also enables us to construct a habitat preserve system that provides for the biological needs and long-term conservation of the Riverside fairy shrimp. Completed HCPs and their accompanying Implementation Agreements contain management measures and protections for identified preserve areas that protect, restore, and enhance the value of these lands as habitat for the Riverside fairy shrimp. These measures include explicit standards to minimize any impacts to the covered species and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands are maintained, expanded, and improved for the species that they cover.

In approving these HCPs, the Service has provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and, in some cases, specified third parties. Similar assurances will be extended to future permit holders in accordance with the Service's HCP Assurance ("No Surprises") rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

We believe that in most instances, the benefits of excluding legally operative HCPs from the critical habitat designations will outweigh the benefits of including them and would thereby prevent the extinction of the species. The following represents our rationale for excluding essential habitat from critical habitat for lands within approved HCPs.

Orange County Central-Coastal Natural Community Conservation Program/Habitat Conservation Plan

The Central-Coastal Natural Community Conservation Program/Habitat Conservation Plan (NCCP/HCP) in Orange County was developed in cooperation with numerous local and State jurisdictions and agencies and

participating landowners, including the cities of Anaheim, Costa Mesa, Irvine, Orange, San Juan Capistrano, and the Southern California Edison and Transportation Corridor Agencies, The Irvine Company, California Department of Parks and Recreation, Metropolitan Water District of Southern California, and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 Federal- or State-listed and unlisted sensitive species within the 208,713 ac (84,463 ha) planning area. We issued an incidental take permit under section 10(a)(1)(B) of the Act that provides conditional incidental take authorization for the Riverside fairy shrimp for all areas within the Central-Coastal Sub-region.

Within the Central-Coastal NCCP/HCP, in the North Ranch Policy Plan area, Riverside fairy shrimp are known to occur in a natural vernal pool located on a rock outcropping. The North Ranch Policy Plan area was excluded from the take authorization provided under the Central-Coastal NCCP/HCP. However, in 2002, the owner of lands within the North Ranch Policy Plan area (the Irvine Company), granted a conservation easement to The Nature Conservancy over the portion of the land where this vernal pool is located, and provided a \$10 million management endowment. The conservation easement and management endowment provide special management and protection for the Riverside fairy shrimp. Therefore, essential habitat within the North Ranch Policy Plan area and within the other lands covered by the Central-Coastal NCCP/HCP in Orange County (within Map Unit 2) have been excluded from this final critical habitat designation based on section 4(b)(2) of the Act.

Western Riverside County Multiple Species Habitat Conservation Plan

The Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) was developed over a period of eight years. Participants in this HCP include 14 cities, the County of Riverside (including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department), the California Department of Parks and Recreation, and the California Department of Transportation. The Western Riverside County MSHCP is a sub-regional plan under the State's NCCP and was developed in cooperation with the California Department of Fish and

Game. The MSHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values of "covered species" and, with regard to covered animal species, their incidental take. The intent of the MSHCP is to provide avoidance, minimization, and mitigation measures for the impacts of proposed activities on covered species and their habitats. Within the 1,260,000 ac (510,000 ha) Plan Area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are now being conserved. The conservation of this large area complements other existing natural and open space areas (e.g., State Parks, Forest Service, and County Park lands). Essential habitat for the Riverside fairy shrimp within the Western Riverside County MSHCP area (within Map Unit 3) has been excluded from critical habitat pursuant to section 4(b)(2) of the Act.

In Riverside County, there are 7 naturally occurring populations of Riverside fairy shrimp (in Skunk Hollow Pool, Field Pool, Scott Pool, Schleuniger Pool, Pechanga Pool, Australia Pool, March Air Reserve Base, and Banning Complex), one population in created pools (Johnson Ranch Created Pools), and one population proposed to be relocated into created pools (Clayton Ranch Proposed Pools), all of which are located within the Plan Area of the Western Riverside County MSHCP (Service 2004). The pools in Riverside County are significant since they represent the most inland extent of the species range (Eriksen and Belk 1999). Also, the type locality for the species, which is of taxonomic significance, was located within Riverside County (Eriksen 1988). Habitat within Riverside County is ideal for the species. Riverside County harbors large vernal pools that persist for long periods of time, allowing this slow-maturing species to reproduce. One of these, the Skunk Hollow Pool, is the largest valley vernal pool remaining in all of southern California (Eriksen and Belk 1999).

Within the Plan Area, four occurrences and their watersheds are protected by existing conservation and management agreements: (1) Skunk Hollow Pool, (2) Field Pool, (3) seven Johnson Ranch Created Pools, and (4) two Clayton Ranch Proposed Pools. A fifth occurrence, Schleuniger Pool, is also protected by existing conservation and management agreements; however, part of its watershed remains unprotected. Under the Western Riverside County MSHCP, the Lake Elsinore Back Basin Core Area will be conserved. The Australia Pool, which is located within this Core Area, will

likely have a minimum buffer of 380 feet to a buffer greater than 1,000 feet from the edge of the pool (Service 2004). Three known populations of Riverside fairy shrimp are located outside of the MSHCP Conservation Area including Banning Complex, Pechanga Pool, and Scott Pool. The Scott Pool has recently been impacted by disking, several pipeline projects, and the installation of a telephone pole (Service 2004). The Pechanga Pool has been subject to cultivation (Eriksen 1988). Impacts to these pools will be avoided and minimized through implementation of the Riparian/Riverine Areas and Vernal Pools Policy. Specifically, this policy requires that habitat for this species be mapped throughout the Plan Area and avoided if feasible. If avoidance is not feasible, surveys will be conducted and 90 percent of the occupied area determined to have long-term conservation value for the species will be conserved and managed (Service 2004).

We anticipate the loss of only 10 percent of occupied Riverside fairy shrimp habitats determined to have long-term conservation value for the species. We anticipate that this species will persist in the remaining 90 percent of occupied habitat with long-term conservation value for the species, including the 39 percent of the modeled habitat within both the existing public/quasi-public lands and the Additional Reserve Lands. The MSHCP will further offset the proposed impacts to this species through management and monitoring actions within the Reserve, including the enhancement of historic or vestigial vernal pools within Core Areas. This enhancement will help offset the impacts of the action by increasing the quality of the habitat that is conserved for this species and by allowing the expansion of populations within the Reserve through the enhancement of historic or vestigial vernal pools that do not currently provide habitat for the species (Service 2004). The Western Riverside County MSHCP includes a significant number of local and State partners. Moreover, the County of Riverside and the participating jurisdictions have demonstrated their sustained support for the Western Riverside County MSHCP by the November 5, 2002 passage of a local bond measure to fund the acquisition of land in support of the MSHCP. Excluding critical habitat from the Western Riverside County MSHCP will continue to foster the close partnerships with the local jurisdictions and the State of California.

Northwestern San Diego Multiple Habitat Conservation Plan

The Northwestern San Diego Multiple Habitat Conservation Plan (MHCP) encompasses approximately 111,939 ac (45,300 ha) and proposes to establish 19,928 ac (8,064 ha) of preserve lands covering Federal or State listed, unlisted, and sensitive species, including the Riverside fairy shrimp. Seven incorporated cities, including Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista are participants in this regional NCCP/HCP. Under the broad umbrella of the MHCP, each participating jurisdiction prepares a sub-area plan that complements the goals of the MHCP. The Service consults on each sub-area plan under section 7 of the Act to ensure they are consistent with the aims of the MHCP. For the City of Carlsbad, we approved their sub-area plan for the MHCP, the Habitat Management Plan (HMP), on November 12, 2004. The Riverside fairy shrimp is one of the species covered under the City of Carlsbad's HMP and we have determined the plan will provide for the long-term conservation of the species.

San Diego Multiple Species Conservation Plan

The San Diego Multiple Species Conservation Plan (MSCP) effort encompasses more than 582,000 ac (236,000 ha) and reflects the cooperative efforts of the County and City of San Diego, ten additional city jurisdictions, and several independent special districts, the State, the building industry, and environmentalists. Over the permit term, the San Diego MSCP provides for the establishment of approximately 171,000 ac (69,573 ha) of preserve areas, and provides conservation benefits for 85 federally listed and sensitive species, including the Riverside fairy shrimp. Under the broad umbrella of the San Diego MSCP, each participating jurisdiction prepares a sub-area plan that implements the goals of the MSCP. The San Diego MSCP and its approved sub-area plans include measures to conserve known Riverside fairy shrimp populations on Otay Mesa. The Service consults on each sub-area plan under section 7 of the Act to ensure they are consistent with the aims of the San Diego MSCP. Currently, the County of San Diego, and the Cities of San Diego, La Mesa, Poway, Chula Vista, and the San Diego Gas and Electric (SDG&E) have approved sub-area plans under the San Diego MSCP. In addition to other Federal or State listed species and sensitive species, these sub-area plans provide long-term

conservation for the Riverside fairy shrimp within San Diego County. In addition, surveys for Riverside fairy shrimp are required in suitable habitat (i.e., vernal pools, ephemeral wetlands, and seasonally ponded areas).

The San Diego MSCP provides for avoidance of impacts to vernal pool habitat for the Riverside fairy shrimp both within and outside of existing and targeted reserve areas. These lands are to be permanently maintained and managed for the benefit of the Riverside fairy shrimp and other covered species. However, "take" is not included in the MSCP 10(a)(1)(B) permit. Thus, the incidental take permits issued to the City and County of San Diego under this plan do not allow for the take of Riverside fairy shrimp in natural vernal pool habitat. The eastern portion of Otay Mesa includes Major and Minor Amendment Areas, which require a special permitting process. Portions of essential habitat areas which the SDG&E company uses for their operational and maintenance activities that are located within the San Diego MSCP in southwestern San Diego County (Map Units 3 and 4), and within the SDG&E Sub-regional Plan have been excluded from critical habitat based on section 4(b)(2) of the Act. This sub-regional plan and the clarification document (July 2004) defines avoidance, minimization, and offsetting measures to be implemented by SDG&E for the operations and maintenance activities and future construction of new facilities and roads.

Relationship of Critical Habitat to HCPs in Development

There are several HCPs and NCCP/HCPs in development which may ultimately include the Riverside fairy shrimp as a covered species. HCPs and NCCP/HCPs currently being developed include various sub-area plans under the MHCP in northwestern San Diego County, the South Orange County NCCP/HCP, and the Northern San Diego Multiple Species Conservation Program (MSCP North). These aforementioned HCPs, all of which are being prepared in cooperation with the State's NCCP program, have been determined to be significant planning efforts that will require the preparation of an Environmental Impact Report and Environmental Impact Statement, in compliance with the National Environmental Policy Act (40 CFR 1502.3) and the California Environmental Quality Act. Further, none of the HCPs under development have reached a point in their development where conservation measures for the Riverside fairy shrimp

have been adequately identified or their adequacy determined by the Service.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on October 19, 2004 (69 FR 61461). We accepted comments on the draft analysis until November 18, 2004. The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Riverside fairy shrimp. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation.

This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector. To conduct the analysis, best available data were gathered from a variety of sources, including regional, city, and county planning agencies, land developers and conservancies, and project managers, including those for both preserves and planned developments.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of

protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The largest share of economic impacts identified by this analysis is to real estate development. Given the magnitude of forecast real estate development impacts in each category of impact, the analysis performs a screening test for efficiency and distributional effects that go beyond the impact on the project applicant or landowner only. That is, where changes in the regional output of housing, for instance, may be associated with Riverside fairy shrimp-related conservation activities, consumer and producer impacts for the entire housing market may exist. The screening test concludes that the amount of housing potentially removed from the market supply in each county is not a significant amount of the total supply of new housing. Under these conditions, significant consumer or producer surplus losses are not expected. However, for past impacts occurring on lands excluded from designation, the housing market in both San Diego County may have experienced reduced output or increased prices as a result of Riverside fairy shrimp-related conservation activities.

We anticipate no impacts to national security, Tribal lands, partnerships, or habitat conservation plans resulting from this critical habitat designation. Our economic analysis indicates an overall low cost resulting from the designation.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section), or by downloading it from the Internet at <http://carlsbad.fws.gov>.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of Section 4(b)(2) of the Act to determine the economic consequences of designating the specific

areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent non-profit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In

general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the Small Business Regulatory Enforcement Fairness Act does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under Section 7 of the Act on activities they fund, permit, or implement that may affect Riverside fairy shrimp. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinstate consultation for ongoing Federal activities.

The draft economic analysis (September 15, 2004) was based on acreages from the proposed rule and predicts potential costs of the proposed designation to small businesses. Based on this analysis, the number of small land development business affected annually would be 7.1 (0.3 percent of total small businesses) for Los Angeles County, 5.6 (0.5 percent of total small businesses) for Orange County, and 8.0 (0.9 percent of total small businesses) for San Diego County. Over 20 years, the total impact on small land development businesses ranged from \$3,534,420 to \$18,969,901 for Los Angeles County,

\$10,705,409 to \$58,439,095 for Orange County, and \$2,796,785 to \$15,206,384 for San Diego County. The annual impact on revenue per affected business per year ranged from \$5,000 to \$26,700 for Los Angeles County, \$19,000 to \$104,700 for Orange County, and \$3,500 to \$19,000 for San Diego County.

Between 2005–2024, the economic analysis predicts potential cost from the designation of critical habitat for the Riverside fairy shrimp on real estate development at Carlsberg Ranch/Tierra Rajada (Sub-Units 1A and 1B) is \$376,000; to public park improvements at O'Neill Park (Unit 2) is \$28,000; to rail construction at the Poinsettia Lane Train Station (Unit 4) is \$28,000; and no additional economic impact on lands owned by the Sweetwater Union High School District (Unit 5) because these lands have already been conserved as an offsetting measure for the development of the Otay Mesa High School. Based on this data from the proposed rule, and the additional exclusions of units made in this final rulemaking, we have determined that this designation would not affect a substantial number of small land development companies. Further, we have determined that this designation would also not result in a significant effect to the annual sales of those small businesses impacted by this designation. As such, we are certifying that this designation of critical habitat would not result in a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. This final rule to designate critical habitat for the Riverside fairy shrimp is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children (AFDC) work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-

Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply. Nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Riverside fairy shrimp imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not

unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Riverside fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). The final environmental assessment is available upon request from the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009 (telephone 760/431-9440), or on our Web site at <http://carlsbad.fws.gov>.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

Historical records indicate that there were two vernal pools on or near Tribal lands of the Pechanga Band of Luiseño Indians that contained Riverside fairy

shrimp (Eriksen 1988). After reviewing aerial photographs of the area and meeting with the Tribe's Environmental Coordinator in March 2004, we were unable to confirm these occurrences. It is possible that additional survey work would allow a better documentation of the possible species occurrence. However, at this time we have insufficient information on the occurrence of the Riverside fairy shrimp on Tribal lands of the Pechanga Band of Luiseño Indians. Therefore, critical habitat for the Riverside fairy shrimp has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009 (telephone 760/431-9440).

Author(s)

The primary author of this package is the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

A Note About Critical Habitat Unit Numbering

A large number of units in the proposed rule have been exempted or excluded from designation in the final rule. In order to understand the relationship between sub-unit and unit numbers in the proposed rule (which have been retained in the preamble of this document), and sub-unit and unit numbers in the final designation (*i.e.*, in the Regulations Promulgation portion of this document), we provide the following crosswalk: Proposed Sub-units 1A and 1B in the proposed rule and preamble remain as Sub-units 1A and 1B in the Regulations Promulgation section. Sub-unit 2D in the proposed rule and preamble is Unit 2 in the Regulations Promulgation section. Sub-unit 4C in the proposed rule and preamble is Unit 3 in the Regulations Promulgation section. Sub-unit 5A in the proposed rule and preamble is Unit 4 in the Regulations Promulgation section.

Regulation Promulgation

■ Accordingly, amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(h), revise the entry for the Riverside fairy shrimp (*Streptocephalus woottoni*) under "CRUSTACEANS" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(h) *Crustaceans.*
* * * * *

Riverside Fairy Shrimp
(*Streptocephalus woottoni*)

(1) Critical habitat units for Ventura, Orange, and San Diego Counties, California, are depicted on the maps that follow.

(2) Critical habitat consists of vernal pools, vernal pool complexes, and ephemeral ponds and depressions and their associated surrounding upslope areas with the soil and hydrologic regimes indicated on the maps below and in the legal descriptions.

(3) Within these areas, the primary constituent elements for the Riverside fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support vernal pools or other ephemeral ponds and depressions, and their associated watersheds. The primary constituent elements determined essential to the conservation of Riverside fairy shrimp are:

(i) Small to large pools or pool complexes that have the appropriate size and volume, local climate, topography, water temperature, water chemistry, soil conditions, and length of time of inundation with water necessary for Riverside fairy shrimp incubation and reproduction, as well as dry periods necessary to provide the conditions to maintain a dormant and viable cyst bank. Specifically, the conditions necessary to allow for successful reproduction of Riverside fairy shrimp fall within the following ranges:

(A) Moderate to deep depths ranging from 10 in (25 cm) to 5–10 ft (1.5–3 m);

(B) Pool or pond inundation lasting for a minimum of 2 months to 5–8 months or more, *i.e.*, a sufficient wet period in winter and spring months to allow the Riverside fairy shrimp to hatch, mature, and reproduce, followed

by a dry period prior to the next winter and spring rains;

(1) Water temperatures within the range of 41–77 degrees F (5–25 degrees C);

(2) Water chemistry with low total dissolved solids and alkalinity (means of 77 and 65 parts per million, respectively); and

(3) Water pH within a range of 6.4–7.1.

(ii) The immediately surrounding upslope area that provides the pool or pool complex with the following:

(A) Hydrologic flows, both above-ground (sheet flow) and sub-surface through soil or sediments, to fill the pools and maintain the seasonal cycle of ponding and drying, at the appropriate rates;

(B) A source of detritus and nutrients;

(C) Sources of soil, ion and mineral transport to the pool or pool complex to provide and maintain the appropriate water chemistry conditions and impermeability of the pool basin(s); and

(D) Habitat for animals that act as dispersers of cysts and vernal pool plant seeds or pollen, as well as habitat for the

pollinators of the vernal pool plants that also form an integral part of the vernal pool's ecology.

(iii) The size of the immediately surrounding upslope area varies greatly depending on a number of factors and has been assessed for each sub-unit. Factors that affect the size of the surrounding upslope area include surface and sub-surface hydrology, the topography of the area surrounding the pool or pools, the vegetative coverage, and the soil and bedrock substrate in the area. The upslope areas designated vary from a few acres to over 100 ac (40 ha) in size.

(iv) Soils in the summit, rim and basin geomorphic positions with a clay component and/or an impermeable surface or subsurface layer that provide a unique assemblage of nutrient availability and redox conditions known to support vernal pool habitat. The biogeochemical environment strongly influences hydrologic properties and plays a critical role in nutrient cycling in vernal pool ecosystems (Hobson and Dahlgren 1998).

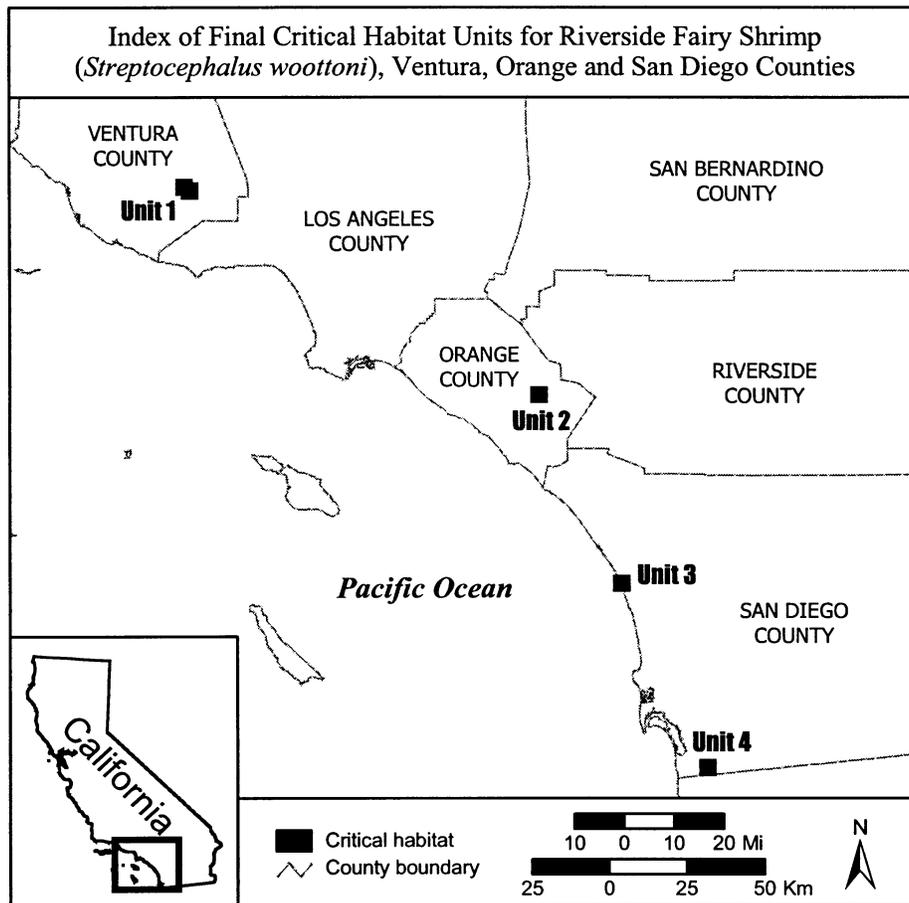
(v) The matrix of vernal pools/ephemeral wetlands, the immediate upslope areas, upland habitats, and underlying soil substrates form hydrological and ecologically functional units. These features and the lands that they represent are essential to the conservation of the Riverside fairy shrimp. All lands identified as essential and proposed as critical habitat contain one or more of the primary constituent elements for the Riverside fairy shrimp.

(4) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(5) Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(6) Index map of critical habitat units for the Riverside fairy shrimp follows:

BILLING CODE 4310-55-P

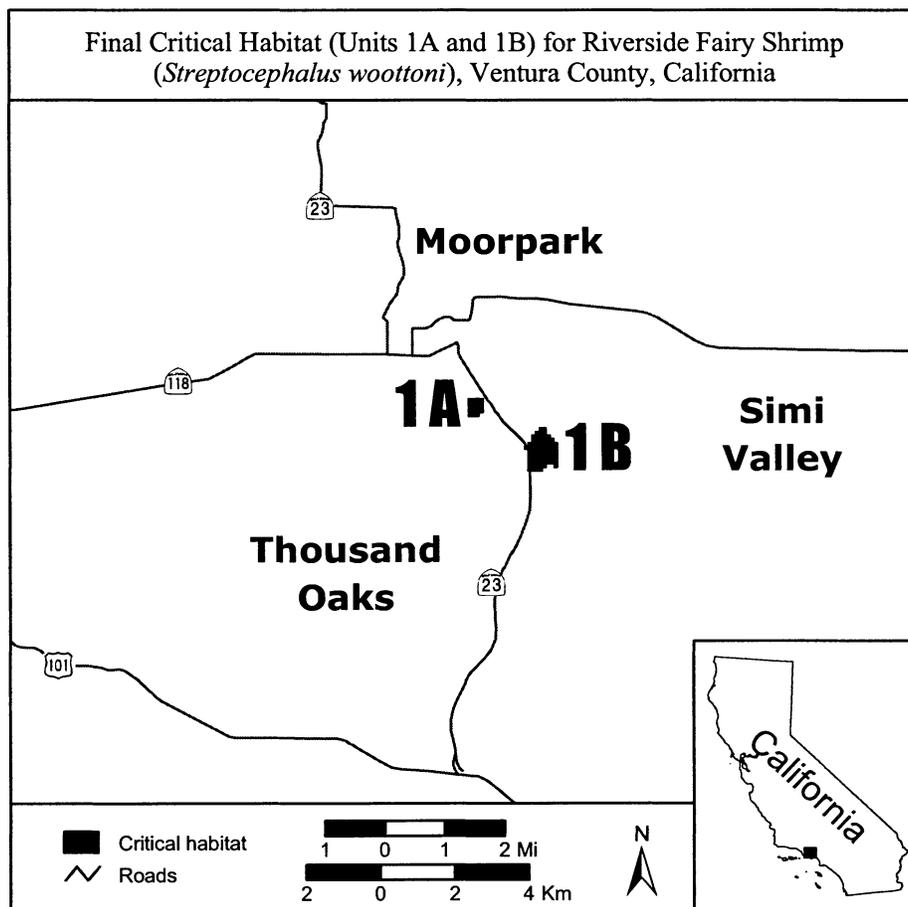


(7) Unit 1: Ventura County, California.
 (i) Sub-unit 1A: City of Moorpark Greenbelt, north Tierra Rejada Valley from USGS 1:24,000 quadrangle map Simi Valley West. Lands bounded by the following UTM NAD27 coordinates (E, N): 329000, 3793300; 329400, 3793300; 329400, 3792900; 329300, 3792900; 329300, 3792800; 329000, 3792800; 329000, 3793300.

(ii) Sub-unit 1B: south Tierra Rejada Valley. Lands bounded by the following UTM NAD27 coordinates (E, N): 330900, 3792500; 331100, 3792500; 331100, 3792300; 331200, 3792300; 331200, 3792200; 331300, 3792200; 331300, 3792100; 331400, 3792100; 331400, 3791400; 331300, 3791400; 331300, 3791500; 331100, 3791500; 331100, 3791400; 331000, 3791400;

331000, 3791300; 330600, 3791300; 330600, 3791900; 330500, 3791900; 330500, 3792000; 330600, 3792000; 330600, 3792100; 330700, 3792100; 330700, 3792300; 330800, 3792300; 330800, 3792400; 330900, 3792400; 330900, 3792500.

(iii) **Note:** Map of critical habitat Sub-units 1A and 1B for the Riverside fairy shrimp follows:



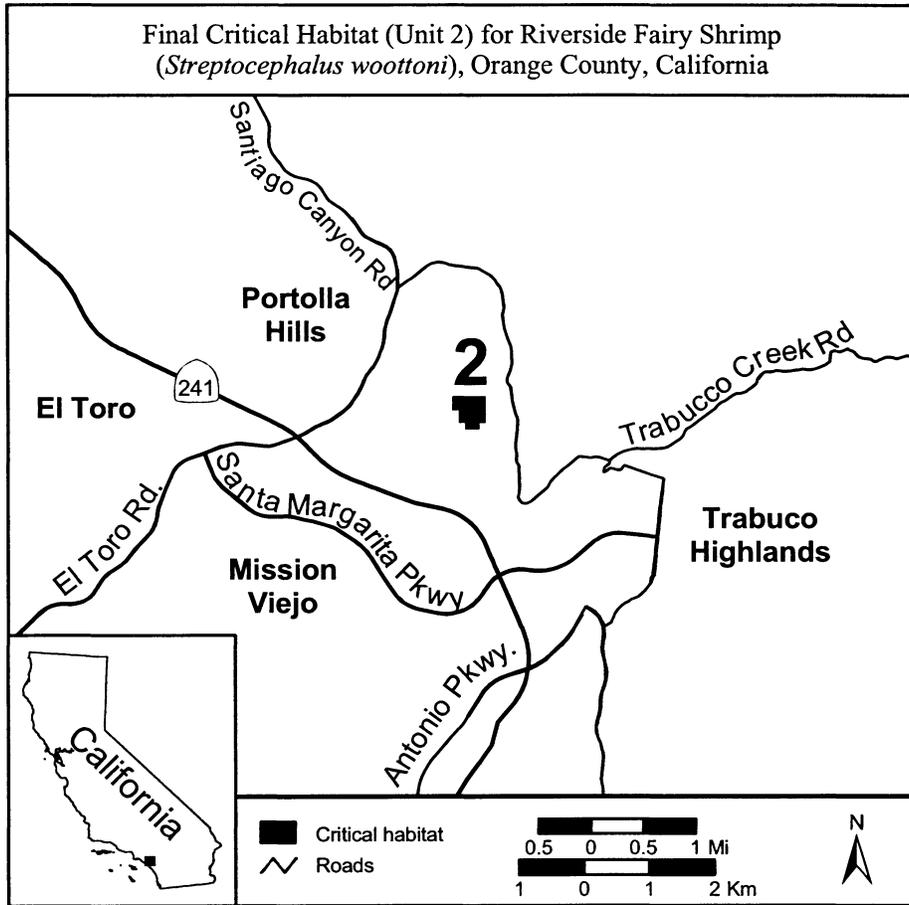
(8) Unit 2: Orange County, California. From USGS 1:24,000 quadrangle map Santiago Peak.

(i) Unit 2: Land within O'Neill Regional Park. Lands bounded by the

following UTM NAD27 coordinates (E, N): 443400, 3725300; 443900, 3725300; 443900, 3724900; 443800, 3724900; 443800, 3724800; 443600, 3724800; 443600, 3724900; 443500, 3724900;

443500, 3725100; 443400, 3725100; 443400, 3725300.

(ii) **Note:** Map of critical habitat Unit 2 for the Riverside fairy shrimp follows:



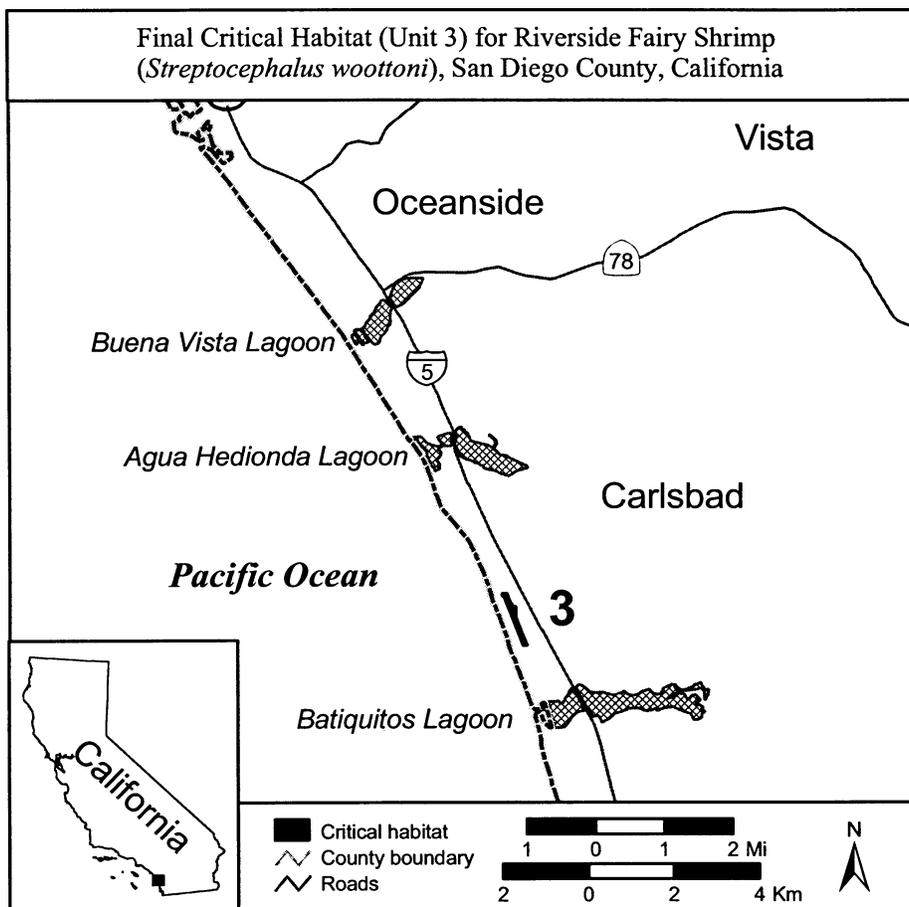
(9) Unit 3: North San Diego County, San Diego County, California. From USGS 1:24,000 quadrangle map Encinitas.

(i) Unit 3: Land near Poinsettia Lane Commuter Station, Carlsbad Lands bounded by the following UTM NAD27 coordinates (E, N): 470100, 3663600; thence east to the North San Diego County Transit (NSDCT) boundary at UTM NAD27 y-coordinate 3663600; thence south following the NSDCT boundary to UTM NAD27 x-coordinate

470300; thence south to UTM NAD27 coordinates 470300, 3663300; thence east to the NSDCT boundary at UTM NAD27 y-coordinate 3663300; thence southeast following the NSDCT boundary lands to UTM NAD 27 x-coordinate 470400; thence south following UTM NAD27 x-coordinate 470400 to the NSDCT boundary; thence west and south following the NSDCT boundary to UTM NAD27 y-coordinate 3662400; thence west following UTM NAD27 y-coordinate 3662400 to the

NSDCT boundary; thence northwest following the NSDCT boundary to UTM NAD27 x-coordinate 470400; thence north along UTM NAD27 x-coordinate 470400 to UTM NAD27 coordinates 470400, 3662900; thence west to NSDCT lands at UTM NAD 27 y-coordinate 3662900; thence northwest following the NSDCT boundary returning to UTM NAD27 coordinates 470100, 3663600.

(ii) **Note:** Map of critical habitat Unit 3 for the Riverside fairy shrimp follows:



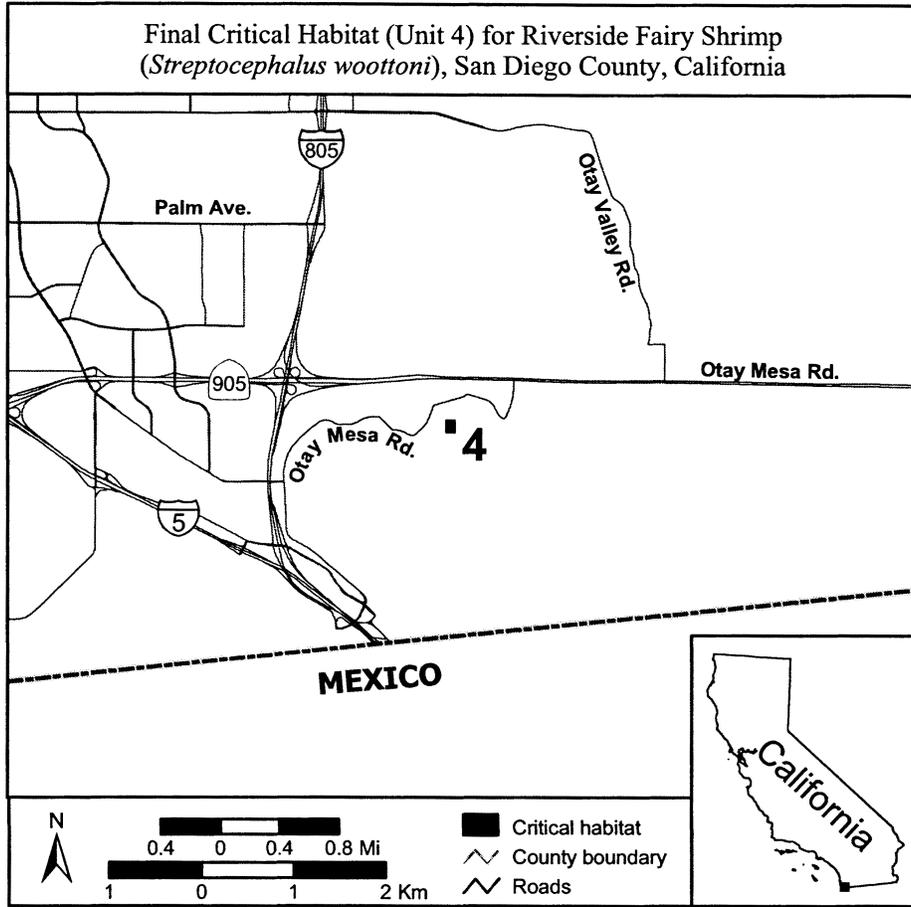
(10) Map Unit 4: South San Diego County, San Diego, California. From USGS 1:24,000 quadrangle map Imperial Beach.

(i) Unit 4: Sweetwater Union High School District lands on Otay Mesa. Lands bounded by the following UTM

NAD27 coordinates (E, N): 498000, 3602800; 498100, 3602800; thence south to the Sweetwater Union High School District (SUHSD) boundary at UTM NAD27 x-coordinate 498100; thence west following the SUHSD boundary to

UTM NAD27 x-coordinate 498000; thence north following UTM NAD27 x-coordinate 498000 returning to UTM NAD27 coordinates 498000, 3602800.

(ii) **Note:** Map of critical habitat Unit 4 for the Riverside fairy shrimp follows:



* * * * *

Dated: March 31, 2005.
Craig Manson,
*Assistant Secretary for Fish and Wildlife and
Parks.*
[FR Doc. 05-6825 Filed 4-11-05; 8:45 am]
BILLING CODE 4310-55-C



Federal Register

**Tuesday,
April 12, 2005**

Part III

Department of Labor

Employment and Training Administration

**Planning Guidance and Instructions for
Submission of Two Years of the Strategic
Five-Year State Plan for Title I of the
Workforce Investment Act of 1998 and
the Wagner-Peyser Act; Notice**

DEPARTMENT OF LABOR**Employment and Training Administration****Planning Guidance and Instructions for Submission of Two Years of the Strategic Five-Year State Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act**

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide interested parties with the planning guidance for use by States in submitting two years of their Strategic Five-Year State Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act. The Planning Guidance and Instructions provide a framework for the collaboration of Governors, Local Elected Officials, businesses and other partners to continue the development of workforce investment systems that address customer needs, deliver integrated, user-friendly services; and are accountable to the customers and the public.

FOR FURTHER INFORMATION CONTACT: Ms. Gay Gilbert, Administrator, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210. Telephone: (202) 693-3980 (voice) (This is not a toll free number) or (202) 693-7755 (TTY). Information may also be found at the Web site—<http://www.doleta.gov/usworkforce>.

SUPPLEMENTARY INFORMATION: The Workforce Investment Act (WIA or Act), Pub. L. 105-220 (August 7, 1998) provides the framework for a reformed workforce investment system designed to meet the needs of the nation's employers, job seekers and those who want to further their careers.

In the context of the 21st century innovation economy, the workforce investment system has a critical role to play at every level "local, State, and Federal—to ensure a skilled and competitive workforce. To effectively drive the economic growth of our communities and the nation and to provide the workers of this country with the right skills and opportunities for good jobs with good pay and career pathways, the public investments in workforce development need to be strategic. Strategies for investment need to embrace new methods of engagement with strategic partners as well as new service delivery paradigms that address the ever changing economy and labor market. Innovation and technology are continuously changing the nature of

work at an accelerated pace. Therefore, the strategic planning process for workforce investment must be dynamic, fluid, and future oriented.

The Workforce Investment Act (WIA) of 1998 created dramatic changes to the workforce system. With the overarching goal to streamline, consolidate, and integrate a wide array of employment and training programs, system changes spanned every facet of operation including governance, administration and funding, and service delivery. The vision is for an integrated workforce investment system better able to respond to the needs of its customers. The framework of WIA embodies principles that remain critical to the strategic planning process in today's economy.

Since the passage of WIA, the workforce investment system broadly has made great strides in implementing the principles described above. However, there remains significant opportunity for States and local areas to utilize the framework of WIA to realize the vision these principles reflect. The changes in the WIA State planning process reflected in this document are intended to facilitate a realization of that vision as well as to set the stage for the planning process in the context of the 21st century economy.

Signed at Washington, DC this 5th day of April, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

State Planning Guidance and Instructions for Title I of the Workforce Investment Act of 1998 (Workforce Investment Systems) and Wagner-Peyser Act*Statement of Purpose*

The purpose of this document is to provide planning guidelines to States and localities for the development of the Strategic Five-Year State Plan for title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act (hereinafter referred to as the State Plan.) The State Plan is required in order for States to receive formula allotments under the Act. The current Strategic Five-Year State Plans expire June 30, 2005. The Department of Labor is anticipating the reauthorization of WIA within the next two years. To meet the requirement that States must have approved State plans in place to receive allotments, the Employment and Training Administration (ETA) is requiring states to only develop a plan for the first two years of the five year strategic planning cycle. This will allow States to strategically approach their

workforce investment policies for the immediate future, without requiring a full five year strategic plan, in light of the anticipated reauthorization of WIA. The information required in the Plan is requested in order to meet the information requirements of the act and/or to demonstrate compliance with WIA, the WIA regulations, including 29 CFR part 37, the Wagner-Peyser Act, and the Wagner-Peyser Act regulations.

Background

The Planning Guidance and Instructions provide a framework for the collaboration of Governors, Local Elected Officials, businesses and other partners to design and build workforce investment systems that address customer needs; deliver integrated, user-friendly services; and are accountable to the customers and the public. The document is organized in two distinct sections. The first section of the document is devoted to providing strategic guidance from a national perspective and communicates the current goals and strategic direction for the workforce system of the U.S. Department of Labor. The second section of the document is the actual format and guidance related to content for submission of the State Plan.

The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to achieve the goals for WIA based on their particular needs.

Part I. National Strategic Direction

The purpose of this portion of the document is to communicate national direction and strategic priorities for the workforce investment system. Broadly, the Federal goals for the workforce investment system for this planning cycle include:

- Realizing the reforms envisioned by the Workforce Investment Act including:
 - Integrated, seamless service delivery through comprehensive One-Stop Career Centers;
 - A demand-driven workforce system governed by business-led workforce investment boards;
 - Maximum flexibility in tailoring service delivery and making strategic investment in workforce development activities to meet the needs of State and local economies and labor markets;
 - Customers making informed choices based on quality workforce information and accessing quality training providers;

- Increased fiscal and performance accountability; and
- A youth program targeting out-of-school populations with increased accountability for employment and/or increased secondary and post-secondary education outcomes.

- Incorporating new statutory and regulatory program requirements that have evolved since the passage of WIA, such as priority of service for veterans as prescribed by the Jobs for Veterans Act (Pub. L. 107-288), (38 U.S.C. 4215).

- Providing the national strategic priorities and direction in the following areas:

- Implementation of a demand-driven workforce system;

- System reform to eliminate duplicative administrative costs and to enable increased training investments;

- Enhanced integration of service delivery through One-Stop delivery systems nationwide;

- A refocusing of the WIA youth investments on out-of-school youth populations, collaborative service delivery across Federal programs, and increased accountability;

- Improved development and delivery of workforce information to support workforce investment boards in their strategic planning and investments; providing tools and products that support business growth and economic development; and providing quality career guidance directly to students and job seekers and their counselors through One-Stop Career Centers;

- Faith-based and community-based organizations playing an enhanced role in workforce development;

- Enhanced use of waivers and workflex provisions in WIA to provide greater flexibility to States and local areas in structuring their workforce investment systems; and

- Reporting against common performance measures across Federal employment and training programs.

Demand-Driven Workforce Investment System

The realities of today's global economy make it imperative that the workforce investment system be demand-driven, providing services that prepare workers to take advantage of new and increasing job opportunities in high growth/high demand and economically vital industries and sectors of the American economy. The foundation of this effort is partnerships that include the workforce system, business and industry, and education and training providers, that develop and implement a strategic vision for economic development. Becoming

demand-driven represents a major transformation of this system, which, for 40 years, framed around individuals needs for service rather than focusing on both the needs of job seekers and the business community.

To be successful, the workforce investment system must begin today to prepare the workforce of tomorrow. Each year, the United States invests approximately \$15 billion in the workforce system. To ensure that this large investment is used effectively, it is imperative that all of the components of the workforce system at the national, State, and local levels become demand-driven and contribute to the economic well-being of communities and the nation by developing a qualified and competitive workforce. Current job opportunities must be known as well as where the good jobs will be in the future by (1) identifying the workforce needs in high-growth, high-demand and economically critical industries and the necessary preparation required to succeed in those occupations and (2) understanding the workforce challenges that must be addressed to ensure a prepared and competitive workforce. This requires all of the key players in the State and local system, including Governors and Local Elected Officials, State and Local Workforce Investment Boards (WIBs), State Workforce Agencies, and One-Stop Career Centers to:

- Have a firm grasp of their State and local economies;

- Strategically invest and leverage their resources;

- Build partnerships between industry leaders and educational institutions that develop solutions to workforce challenges; and

- Allocate training dollars to provide the skills and competencies necessary to support industry now and in the future.

The workforce investment system is a catalyst that links employers, economic development organizations, public agencies, and the education community to build and deliver innovative answers to workforce challenges.

Development of a demand driven strategic plan requires utilizing economic information and analysis to drive strategic investments, identifying strategic partners, and designing effective service delivery systems. Some of the important elements of a demand-driven strategic plan include the following:

- Economic analysis is a fundamental starting point for a demand-driven approach to workforce investment. A wide array of workforce information and data, including economic indicators, labor market information, census data,

educational data, transactional data, projections and data from the private sector, and one-on-one interviews with businesses needs to be collected and analyzed.

- Workforce strategies that target industries that are high growth, high demand and critical to the State and/or local economy are most likely to support economic growth and provide individuals with the opportunities to get good jobs with good pay and career pathways.

- Strategic partnerships among the workforce investment system, targeted businesses and industries, economic development agencies, and education and training providers (including K-12) provide a strong foundation for identifying workforce challenges and developing and implementing innovative workforce solutions focused on a workforce with the right skills. The workforce system must be the catalyst for bringing these target partnerships together.

- A solutions-based approach that brings the right strategic partners and resources to the table promotes a comprehensive analysis of workforce challenges and also provides the synergy for successful, innovative workforce solutions and the opportunity to leverage workforce investment resources effectively.

- A demand-driven workforce investment system ensures that the full array of assets available through the One-Stop delivery system is available to support individual workers as well as to provide solutions to workforce issues identified by business and industry.

- Translating the demand for workers with the skills businesses need into demand-driven career guidance must be one of the human resource solutions provided broadly by the workforce investment system.

The proposed State planning guidance includes new language in support of these principles which offers States an opportunity, in the context of the State planning process, to articulate formally demand-driven goals and strategies tailored to the unique needs of the State.

System Reform and Increased Focus on Training

Workforce training is one of the major areas in which the President is focusing reform efforts. In April 2004, he challenged the workforce investment system at the State and local levels to eliminate unnecessary overhead costs and simplify administration in order to preserve more resources for training. The system currently spends approximately 30% of appropriated

funds each year on infrastructure and "other" costs as currently reported by States as part of their routine reporting under WIA. Some of these funds are wisely spent, but clearly more can be made available for training. The President has called for the system to double the number of individuals trained under WIA. Through WIA reauthorization, additional reforms in support of these goals are anticipated.

1. The WIA State Plan provides States with a platform to promote greater efficiencies in the workforce system by articulating administrative policies for State and local governance processes. The State has multiple vehicles to increase consolidation and integration of the infrastructure through policies, required practices, provision of technical assistance and monitoring. The State also can articulate its goals for expenditure of resources for training in industries and occupations critical to the State's economy.

Enhanced Integration Through One-Stop Delivery System

One of the primary expectations of the workforce system under the WIA statutory framework is a seamless, integrated One-Stop delivery system. The expectation for an integrated service delivery system remains firmly embedded as a key principle of a demand-driven workforce system.

The goal of integration is to ensure that the full spectrum of community assets is used in the service delivery system to support human capital solutions for businesses, industry and individual customers. Different programs fund different types of services and serve different populations. These unique program features in the system provide both breadth and depth to the human capital solutions offered to businesses and industry. However, the assets go beyond program funding, and without integration of those assets as well, the system limits its impact and success.

The workforce system has had a vision of integration for over a decade, supported with the Federal investment in One-Stop Centers in the mid-1990s and later realized in statute with the passage of WIA. Despite many efforts, the vision of seamless, integrated service delivery remains unrealized in many areas. It is still all too common to visit local areas across the nation and find a One-Stop office within blocks of a separate "job service" or "affiliate" office or a comprehensive One-Stop Center where programs are co-located, but with little integration. In addition, there is often a lack of consistency in policy and service delivery across

workforce investment areas within a State, which causes customer confusion and frustration. While there are real challenges to achieving the vision of integration, it is a vision that can be realized. Due to strong leadership, creativity, and hard work at the State and local levels, a number of One-Stop Centers have overcome turf issues and administrative challenges to offer integrated service delivery.

Strong State leadership has been identified as one of the key success factors in achieving integration in One-Stop Centers. The WIA State planning process offers a unique opportunity for the Governor and the State workforce investment board to clearly articulate the State's goals for integration and to help remove any barriers. The Employment and Training Administration (ETA) is committed to working with States to support integration efforts.

A New Vision for Serving Youth Most in Need

The Administration is committed to bold, innovative and flexible initiatives to prepare the most at-risk and neediest youth for jobs in our changing economy. ETA, in collaboration with the Departments of Education, Health and Human Services, and Justice, have developed a new strategic vision to more effectively and efficiently serve out-of-school youth and those at risk of dropping out of school (Training and Employment Guidance Notice No. 3-04). Regional Youth Forums were conducted in the fall of 2004 that brought together State youth leaders to develop similar partnerships at the State level, and to begin to develop a common vision and action plan for implementing cross-agency State approaches for serving the neediest youth.

Out-of-school youth (and those most at risk of dropping out) are an important part of the new workforce *supply pipeline* needed by businesses to fill job vacancies in a knowledge-based economy. WIA-funded youth programs should connect these youth with quality secondary and post-secondary educational opportunities and high-growth and other employment opportunities.

ETA's new vision for serving youth will present challenges for how State and local WIA programs interact and link with State and local education and economic development systems. To achieve this vision, States should consider this new strategic approach and associated goals across four major areas:

⇒ **Alternative Education—Goal:** Provide leadership to ensure that youth

served in alternative education programs will receive a high quality education that adheres to the State standards developed in response to the No Child Left Behind (NCLB) legislation.

⇒ **Demand of Business—Goal:** The investment of WIA youth resources will be demand-driven, assuring that youth obtain the skills needed by businesses so that they can succeed in the 21st century economy.

⇒ **Neediest Youth—Goal:** Investments will be prioritized to serve youth most in need including out-of-school youth (and those at risk of dropping out of school), youth in foster care, those aging out of foster care, youth offenders, children of incarcerated parents, homeless youth, and migrant and seasonal farmworker youth.

⇒ **Improved Performance—Goal:** Key initiatives will be implemented to assure that programs are performance-based and focused on outcomes.

ETA has developed strategic partnerships at the Federal level with the Department of Education's Office of Vocational and Adult Education, the Department of Health and Human Services' Administration for Children and Families, and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention. Through the State planning process, Governors have the opportunity to promote strategic partnerships across State agencies serving youth to enhance service delivery and more effectively leverage available resources.

ETA encourages Governors to play a key leadership role in enhancing intra-State coordination among youth serving agencies and to develop cross-agency approaches for serving youth. The WIA State planning process is a vehicle for driving a Statewide youth vision that ensures that previously marginalized youth become an important pipeline of workers that helps drive the State's economy.

A Stronger Workforce Information System

As discussed previously, a strong foundation of economic data and workforce information, along with the ability to analyze the data and transform it into easily understood intelligence, is one of the keys to effective strategic planning for a demand-driven workforce investment system. To achieve that vision, the workforce system needs to move beyond traditional labor market information strategies and develop a workforce information system that helps drive both economic development and workforce investment for the State. In

their lead role, States need to embrace a wide array of data sources, new strategies for making it available to customers, and consider alternative ways to invest and leverage public and private resources to build the State's workforce information system.

Workforce information is critical not only for driving the investments of the workforce system, but it is also a fundamental decision tool for the nation's businesses, students, workers, parents, guidance counselors, and education institutions. The development of workforce information is the responsibility broadly of Governors, State workforce agencies, State agencies designated under WIA as responsible for labor market information, State economic development agencies, and local workforce investment boards. A better alignment of information producers, brokers, and consumers both inside and outside the publicly funded workforce system must occur.

Effective Utilization of Faith-Based and Community Based Organizations

President Bush signed Executive Order 13198 on January 29, 2001, with the goal of removing statutory, regulatory, and procedural barriers that prevent faith-based and community organizations (FBCOs) from participating in the provision of social services. The Department of Labor Center for Faith-based and Community Initiatives, created under the Executive Order, has worked closely with ETA to help increase the opportunities for FBCOs to partner with the workforce investment system. As legal and regulatory barriers have been removed, the Department of Labor has been increasingly focusing on ways to integrate FBCOs into the WIA system at the local level including:

- Expanding the access of faith-based and community organizations' clients and customers to the training, job and career services offered by the local One-Stop Centers;
- Increasing the number of faith-based and community organizations serving as committed and active partners in the One-Stop delivery system.

By integrating the workforce system with the resources available through these organizations, the capacity of the workforce investment system to serve those most in need is significantly expanded. Continuing to promote integration of FBCOs remains a focal point for the President and the Department of Labor. States are encouraged to incorporate strategies that include FBCOs into their State Plans.

Increased Use of Flexibility Provisions in WIA

For the workforce system to be successful in promoting business prosperity and employment opportunities for workers, States must have the flexibility to design innovative programs based on local need and labor markets. WIA as it exists today provides significant opportunities to States to obtain waivers of statutory and regulatory requirements that may impede achieving the State's workforce goals. Therefore, one of the key focal points as States move into a new planning cycle is to encourage States to utilize the full range of flexibility offered under WIA's waiver and workflex provisions. The workflex option has not been utilized by States and may offer the greatest range of opportunity for States. ETA is committed to sharing the waiver strategies States have utilized to date and providing technical assistance to States considering requesting waivers. The State planning guidance is a vehicle for the State to identify waiver opportunities and to formally request waivers in concert with overall strategic planning. Waivers may be requested at other times as well. (Approved waivers are on the DOLETA automated waiver Web site which can easily be linked to from the <http://www.doleta.gov> Web site.)

Performance Accountability and Implementation of Common Performance Measures

Improved performance accountability for customer-focused results is a central feature of WIA and remains a strategic priority for the President and the Department of Labor. In an effective accountability system, a clear link should exist between the State's program design and the results achieved. The performance information should be available to and easily understood by all customers, stakeholders, and operators of the workforce investment system.

To enhance the management of the workforce system and the usability of performance information, the Department, in collaboration with other Federal agencies, has developed a set of common performance measures for federally-funded training and employment programs. The value of common measures is the ability to describe in a similar manner the core purposes of the workforce system—did people find jobs; did people stay employed; and did earnings increase? Standardizing the definitions of the outcomes across programs simplifies

reporting. Coupled with valid and accurate information, use of common measures provides a greater ability to compare and manage results.

It is ETA's intent to begin data collection in support of common measures effective July 1, 2005, for Program Year 2005. This was recently announced in Training and Employment Guidance Letter 18-04, "Announcing the soon-to-be-published Proposed Revisions to Existing Performance Reporting Requirements for the Implementation of Common Measures for title I of the Workforce Investment Act (WIA), the Wagner-Peyser Act (Employment Service (ES)/Labor Exchange), the Trade Adjustment Assistance Reform Act (TAA), and title 38, chapter 41 Job Counseling, Training, and Placement Service (Veterans' Employment and Training Service (VETS))." Prior to the effective date, ETA will publish proposed revisions to reporting and recordkeeping requirements in support of common measures in a separate **Federal Register** Notice.

The common measures are an integral part of ETA's performance accountability system. ETA will continue to collect from States and grantees other data on program activities, participants, and outcomes necessary for program management, including data that support the existing WIA performance measures, and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

Part II. State Planning Instructions

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Plan Development Process

WIA gives states and local areas a unique opportunity to develop employment and training systems tailored specifically to state and local area needs. Since the state plan is only as effective as the partnerships that operationalize it, it should represent a collaborative process among state and local elected officials, Boards and partners (including economic development, education and private sector partners) to create a shared understanding of the state's workforce investments needs, a shared vision of how the workforce investment system can be designed to meet those needs, and agreement on the key strategies to attain this vision. This type of collaborative planning at all stages—from the initial planning discussions through drafting the state plan document—will enable the state plan to both drive local system improvements and allow room for strategies tailored to local needs. Plan development must also include an opportunity for stakeholder and public review and comment.

Describe, *in one page or less*, the process for developing the state plan.

1. Include (a) a discussion of the involvement of the Governor and the State Board in the development of the plan, and (b) a description of the manner in which the State Board collaborated with economic development, education, the business community and other interested parties in the development of the state plan. (§ 112(b)(1).)

2. Include a description of the process the State used to make the Plan available to the public and the outcome of the State's review of the resulting public comments. (§§ 111(g), 112(b)(9).)

Plan Submission Requirements

WIA state plans must have an original signature of the Governor, and the name of the Governor must be typed below the signature. The due date for submission of the first two-year period, July 1, 2005 through June 30, 2007, of

the five-year strategic plan is *Tuesday, May 31, 2005*.

States have the option to submit state plans in an electronic, hard copy, or CD-ROM format. The Department of Labor is encouraging states to submit state plans in electronic format to reduce the reporting and processing burden and to ensure timely receipt by the Department. The designated Federal Coordinator for the review and approval process is Christine Kulick, e-mail: kulick.christine@dol.gov; phone: (202) 693-3045.

Options for Submission

Electronic Submission. States can submit a state plan electronically either by posting it on an Internet Web site that is accessible to the Department or by transmitting it through electronic mail to the Department.

Posting State Plans on an Internet Web Site. Under this option, a state need only post its state plan on an Internet Web site; inform the Federal Coordinator and the appropriate ETA Regional Administrator (as listed in Attachment A) through electronic mail of the URL and the location of the document on the Web site; provide contact information in the event of problems with accessing the Web site; and certify that no changes will be made to the version of the state plan posted on the Web site after it has been submitted to the Department, unless the Department grants prior approval for such changes.

Transmitting State Plans by Electronic Mail. States submitting their Plan by electronic mail should send it to WIA.PLAN@DOL.GOV with a copy sent to the appropriate ETA Regional Administrator (as listed in Attachment A).

Other Considerations When Using Electronic Submission. State plan certifications with electronic signatures are acceptable. If a state chooses not to use an electronic signature, then the signature page must be submitted in hard copy. If a state chooses to submit its State plan by transmitting it through electronic mail, the state must submit it in Microsoft Word or PDF format.

Hard Copy or CD-ROM Submission. States choosing to submit a hard copy should submit one copy of the plan (with an original signature) to the appropriate ETA Regional Administrator, as listed in Attachment A, and one copy to Christine Kulick, the Federal Coordinator for Plan Review and Approval.

States submitting a state plan on CD-ROM should submit one copy of the plan to Christine Kulick, the Federal Coordinator for Plan Review and

Approval, and one copy to the appropriate ETA Regional Administrator (as listed in Attachment A). If the state plan on the CD-ROM does not include the signature of the Governor on the signature page, the state must submit separately an electronic signature or a signature page in hard copy. Plans submitted on a CD-ROM must be in Microsoft Word or PDF format.

Any state submitting its plan in hard copy, or on a CD-ROM, should send it to the following address, with a copy to the Regional Administrator: Division of One-Stop Operations, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-4231, Washington, DC 20210, Attn: Ms. Christine Kulick.

The Federal Coordinator will confirm receipt of the state plan within two workdays of receipt and indicate the date for the start of the review period. When a state submits an incomplete state plan, the period for review will not start until all required components of the state plan have been received.

Department of Labor Review and Approval

State plans will be reviewed in accordance with 20 CFR 661.220(e), which provides that the Secretary must approve all state plans within 90 days of their submission, unless the Secretary determines in writing that: (1) The state plan is inconsistent with the provisions of title I of WIA or the WIA regulations, including 29 CFR part 37; or (2) the portion of the state plan impacting the Wagner-Peyser Act plan does not satisfy the criteria for approval in section 8(d) of the Wagner-Peyser Act or the Wagner-Peyser Act regulations at 20 CFR part 652. However, for state plans that are submitted by the due date of May 31, 2005, for the two-year planning period, July 1, 2005 through June 30, 2007, the Department of Labor is committed to completing its review of the plan within 30 days.

The appropriate Regional Administrator will advise the state by letter, as soon as possible, that the state plan is approved or disapproved. If the state plan is not approved, the Regional Administrator will clearly indicate the reasons for disapproval and specify what additional information is required or what action needs to be taken for the state plan to be approved.

Negotiated Performance Indicators

WIA allows considerable flexibility in system design and service delivery, in exchange for both accountability for a key set of outcomes and improving those outcomes over time. To

accomplish this, the Secretary of Labor and the Governor of each State must reach agreement on the State's negotiated performance levels for the core indicators of performance, and for customer satisfaction indicators of employers' and participants' satisfaction. These levels of performance become the basis for sanctions for failed performance and, with additional performance levels under Adult Education and Vocational Education, the basis for incentive grants.

At a minimum, the state plan should include proposed performance goals each of the performance indicators for the two program years covered by the Plan for all programs covered in the plan (including Wagner-Peyser). While the state plan is under review, the ETA Regional Administrator and the state will discuss the performance levels, and negotiate on them as appropriate. The Department expects states to enter into preliminary discussions with the local boards and the ETA Regional Administrators before submitting the state plan. States are expected to come to the negotiating table with support from their local boards for the proposed performance goals. Entering into preliminary discussions prior to plan submission will maximize the time available to States, local areas, and the Department to develop a shared set of goals. ETA Regional Administrators will coordinate with other Department of Labor program administrators, including the Veterans' Employment and Training Service (VETS) Regional Administrators, to assure comprehensive Departmental participation. The Department will provide additional guidance regarding the negotiation process at a later date.

Modifications to State Plans

Modifications may be needed in any number of areas to keep the state plan a viable, living document over its two-year life. WIA regulations permit states to modify their plan at any time and 20 CFR 652.212 and 661.230 outline the circumstances under which modifications must be submitted. Modifications are required when:

(1) Changes in Federal or State law or policy substantially change the assumptions upon which the plan is based.

(2) There are changes in the Statewide vision, strategies, policies, performance indicators, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board

or alternative entity and similar substantial changes to the State's workforce investment system.

(3) The State has failed to meet performance goals, and must adjust service strategies.

The regulations, at 20 CFR 652.212, which relate to the Wagner-Peyser Act portions of the plan, also require modifications when there is any reorganization of the State agency designated to deliver services under the Wagner-Peyser Act, any change in service delivery strategy, any change in levels of performance when performance goals are not met, or any change in services delivered by State merit-staff employees.

In general, it is substantial changes to the Strategic Five-Year Plan that require a modification under the regulations, *i.e.*, any change that significantly impacts the operation of the state's workforce investment system.

Modifications to the state plan are subject to the same public review and comment requirements that apply to the development of the original state plan. States should direct any questions about the need to submit a plan modification to the appropriate ETA Regional Administrator (as listed in Attachment A).

Inquiries

General inquiries about the State Planning Instructions may be directed to Christine Kulick, the Federal Coordinator for Plan Review and Approval. She may be contacted by e-mail at kulick.christine@dol.gov or by phone at (202) 693-3045. Inquiries about specific State issues should be directed to the appropriate ETA Regional Administrator (as listed in Attachment A).

State Vision

Describe the Governor's vision for a Statewide workforce investment system. Provide a *summary* articulating the Governor's vision for utilizing the resources of the workforce system in support of the State's economic development that address the issues and questions below. States are encouraged to attach more detailed documents to expand upon any aspect of the summary response if available. (§ 112(a) and (b)(4)(A-C).)

A. What are the State's economic development goals for attracting, retaining and growing business and industry within the State? (§ 112(a) and (b)(4)(A-C).)

B. Given that a skilled workforce is a key to the economic success of every business, what is the Governor's vision for maximizing and leveraging the broad

array of Federal and State resources available for workforce investment flowing through the State's cabinet agencies and/or education agencies in order to ensure a skilled workforce for the State's business and industry? (§ 112(a) and (b)(4)(A-C).)

C. Given the continuously changing skill needs that business and industry have as a result of innovation and new technology, what is the Governor's vision for ensuring a continuum of education and training opportunities that support a skilled workforce? (§ 112(a) and (b)(4)(A-C).)

D. What is the Governor's vision for bringing together the key players in workforce development including business and industry, economic development, education, and the workforce system to continuously identify the workforce challenges facing the State and to develop innovative strategies and solutions that effectively leverage resources to address those challenges? (§ 112(b)(10).)

E. What is the Governor's vision for ensuring that every youth has the opportunity for developing and achieving career goals through education and workforce training, including the youth most in need of assistance, such as out-of-school youth, homeless youth, youth in foster care, youth aging out of foster care, youth offenders, children of incarcerated parents, migrant and seasonal farmworker youth, and other youth at risk? (§ 112(b)(18)(A).)

II. State Workforce Investment Priorities

Identify the Governor's key workforce investment priorities for the State's workforce system and how each will lead to actualizing the Governor's vision for workforce and economic development. (§§ 111(d)(2) and 112(a).)

III. State Governance Structure (§ 112(b)(8)(A))

A. Organization of State Agencies in Relation to the Governor

1. Provide an organizational chart that delineates the relationship to the Governor of the agencies involved in the public workforce investment system, including education and economic development and the required and optional One-Stop partner programs managed by each agency.

2. In a narrative describe how the agencies involved in the public workforce investment system interrelate on workforce and economic development issues and the respective lines of authority.

B. State Workforce Investment Board
(§ 112(b)(1))

1. Describe the organization and structure of the State Board. (§ 111.)
2. Identify the organizations or entities represented on the State Board. If you are using an alternative entity which does not contain all the members required under section 111(b)(1), describe how each of the entities required under this section will be involved in planning and implementing the State's workforce investment system as envisioned in WIA. How is the alternative entity achieving the State's WIA goals? (§ 111(a-c), 111(e), and 112(b)(1).)
3. Describe the process your State used to identify your State board members. How did you select board members, including business representatives, who have optimum policy-making authority and who represent diverse regions of the State as required under WIA? (20 CFR 661.200.)
4. Describe how the board's membership enables you to achieve your vision described above. (§§ 111(a-c) and 112(b)(1).)
5. Describe how the Board carries out its functions as required in § 111(d) and 20 CFR 661.205. Include functions the Board has assumed that are in addition to those required. Identify any functions required in § 111(d) the Board does not perform and explain why.
6. How will the State board ensure that the public (including people with disabilities) has access to board meetings and information regarding State board activities, including membership and meeting minutes? (20 CFR 661.205.)
7. Identify the circumstances which constitute a conflict of interest for any State or local workforce investment board member or the entity that s/he represents, and any matter that would provide a financial benefit to that member or his or her immediate family. (§§ 111(f), 112(b)(13), and 117(g).)
8. What resources does the State provide the board to carry out its functions, *i.e.*, staff, funding, etc.?

C. Structure/Process for State Agencies and State Board To Collaborate and Communicate With Each Other and With the Local Workforce Investment System (§ 112(b)(8)(A))

1. Describe the steps the State will take to improve operational collaboration of the workforce investment activities and other related activities and programs outlined in section 112(b)(8)(A), at both the State and local level (*e.g.*, joint activities, memoranda of understanding, planned

mergers, coordinated policies, etc.). How will the State board and agencies eliminate any existing State-level barriers to coordination? (§§ 111(d)(2) and 112(b)(8)(A).)

2. Describe the lines of communication established by the Governor to ensure open and effective sharing of information among the State agencies responsible for implementing the vision for the workforce system and between the State agencies and the State workforce investment board.

3. Describe the lines of communication and mechanisms established by the Governor to ensure timely and effective sharing of information between the State agencies/ State Board and local workforce investment areas and local Boards. Include types of regularly issued guidance and how Federal guidance is disseminated to local Boards and One-Stop Career Centers. (§ 112(b)(1).)

4. Describe any cross-cutting organizations or bodies at the State level designed to guide and inform an integrated vision for serving youth in the State within the context of workforce investment, social services, juvenile justice, and education. Describe the membership of such bodies and the functions and responsibilities in establishing priorities and services for youth. How is the State promoting a collaborative cross-agency approach for both policy development and service delivery at the local level for youth? (§ 112(b)(18)(A).)

IV. Economic and Labor Market Analysis (§ 112(b)(4))

As a foundation for this strategic plan and to inform the strategic investments and strategies that flow from this plan, provide a detailed analysis of the State's economy, the labor pool, and the labor market context. Elements of the analysis should include the following:

- A. What is the current makeup of the State's economic base by industry?
- B. What industries and occupations are projected to grow and/or decline in the short term and over the next decade?
- C. In what industries and occupations is there a demand for skilled workers and available jobs, both today and projected over the next decade? In what numbers?
- D. What jobs/occupations are most critical to the State's economy?
- E. What are the skill needs for the available, critical and projected jobs?
- F. What are the current and projected demographics of the available labor pool (including the incumbent workforce) both now and over the next decade?

G. Is the State experiencing any "in migration" or "out migration" of workers that impact the labor pool?

H. Based on an analysis of both the projected demand for skills and the available and projected labor pool, what skill gaps is the State experiencing today and what skill gaps are projected over the next decade?

I. Based on an analysis of the economy and the labor market, what workforce development issues has the State identified?

J. What workforce development issues has the State prioritized as being most critical to its economic health and growth?

V. Overarching State Strategies

A. Identify how the State will use WIA title I funds to leverage other Federal, State, local, and private resources in order to maximize the effectiveness of such resources and to expand the participation of business, employees, and individuals in the Statewide workforce investment system? (§ 112(b)(10).)

B. What strategies are in place to address the national strategic direction discussed in part I of this guidance, the Governor's priorities, and the workforce development issues identified through the analysis of the State's economy and labor market? (§ 112(b)(4)(D), 112(a).)

C. Based on the State's economic and labor market analysis, what strategies has the State implemented or plans to implement to target industries and occupations within the State that are high growth, high demand, and vital to the State's economy? (§ 112(a), 112(b)(4)(A).) The State may want to consider:

1. Industries projected to add a substantial number of new jobs to the economy; or
 2. Industries that have a significant impact on the overall economy; or
 3. Industries that impact the growth of other industries; or
 4. Industries that are being transformed by technology and innovation that require new skill sets for workers; or
 5. Industries that new and emerging and are expected to grow.
- D. What strategies are in place to promote and develop ongoing and sustained strategic partnerships that include business and industry, economic development, the workforce system, and education partners (K-12, community colleges and others) for the purpose of continuously identifying workforce challenges and developing solutions to targeted industries' workforce challenges? (§ 112(b)(8).)

E. What State strategies are in place to ensure that sufficient system resources are being spent to support training of individuals in high growth/high demand industries? (§ 112(b)(17)(A)(i), and 112(b)(4)(A).)

F. What workforce strategies does the State have to support the creation, sustainability, and growth of small businesses and support for the workforce needs of small businesses as part of the State's economic strategy? (§§ 112(b)(4)(A) and 112(b)(17)(A)(i).)

G. How are the funds reserved for Statewide activities used to incent the entities that make up the State's workforce system at the State and local levels to achieve the Governor's vision and address the national strategic direction identified in part I of this guidance? (§ 112(a).)

H. Describe the State's strategies to promote collaboration between the workforce system, education, human services, juvenile justice, and other systems to better serve youth that are most in need and have significant barriers to employment, and to successfully connect them to education and training opportunities that lead to successful employment. (§ 112(b)(18)(A).)

I. Describe the State's strategies to identify State laws, regulations, policies that impede successful achievement of workforce development goals and strategies to change or modify them. (§ 112(b)(2).)

J. Describe how the State will take advantage of the flexibility provisions in WIA for waivers and the option to obtain approval as a workflex State pursuant to § 189(i) and § 192.

VI. Major State Policies and Requirements

Describe major State policies and requirements that have been established to direct and support the development of a Statewide workforce investment system not described elsewhere in this Plan as outlined below. (§ 112(b)(2).)

A. What State policies and systems are in place or planned to support common data collection and reporting processes, information management, integrated service delivery, and performance management? (§§ 111(d)(2) and 112(b)(8)(B).)

B. What State policies are in place that promote efficient use of administrative resources such as requiring more co-location and fewer affiliate sites in local One-Stop systems to eliminate duplicative facility and operational costs or requiring a single administrative structure at the local level to support local boards and to be the fiscal agent for WIA funds to avoid

duplicative administrative costs that could otherwise be used for service delivery and training? The State may include administrative cost controls, plans, reductions, and targets for reductions if it has established them. (§§ 111(d)(2) and 112(b)(8)(A).)

C. What State policies are in place to promote universal access and consistency of service Statewide? (§ 112(b)(2).)

D. What policies support a demand-driven approach, as described in Part I. "Demand-driven Workforce Investment System", to workforce development—such as training on the economy and labor market data for local Board and One-Stop Career Center staff? (§§ 112(b)(4) and 112(b)(17)(A)(iv).)

E. What policies are in place to ensure that the resources available through the Federal and/or State apprenticeship programs and the Job Corps are fully integrated with the State's One-Stop delivery system? (§ 112(b)(17)(A)(iv).)

VII. Integration of One-Stop Service Delivery

Describe the actions the State has taken to ensure an integrated One-Stop service delivery system Statewide. (§§ 112(b)(14) and 121.)

A. What State policies and procedures are in place to ensure the quality of service delivery through One-Stop Centers such as development of minimum guidelines for operating comprehensive One-Stop Centers, competencies for One-Stop Career Center staff or development of a certification process for One-Stop Centers? (§ 112(b)(14).)

B. What policies or guidance has the State issued to support maximum integration of service delivery through the One-Stop delivery system for both business customers and individual customers? (§ 112(b)(14).)

C. What actions has the State taken to promote identifying One-Stop infrastructure costs and developing models or strategies for local use that support integration? (§ 112(b)(14).)

D. How does the State use the funds reserved for Statewide activities pursuant to §§ 129(b)(2)(B) and 134(a)(2)(B)(v) to assist in the establishment and operation of One-Stop delivery systems? (§ 112(b)(14).)

E. How does the State ensure the full array of services and staff in the One-Stop delivery system support human capital solutions for businesses and individual customers broadly? (§ 112(b)(14).)

VIII. Administration and Oversight of Local Workforce Investment System

A. Local Area Designations:

1. Identify the State's designated local workforce investment areas and the date of the most recent area designation, including whether the State is currently re-designating local areas pursuant to the end of the subsequent designation period for areas designated in the previous State Plan. (§ 112(b)(5).)

2. Include a description of the process used to designate such areas. Describe how the State considered the extent to which such local areas are consistent with labor market areas: geographic areas served by local and intermediate education agencies, post-secondary education institutions and area vocational schools; and all other criteria identified in section 116(a)(1) in establishing area boundaries, to assure coordinated planning. Describe the State Board's role, including all recommendations made on local designation requests pursuant to section 116(a)(4). (§§ 112(b)(5) and 116(a)(1).)

3. Describe the appeals process used by the State to hear appeals of local area designations referred to in § 112(b)(5) and § 116(a)(5).

B. Local Workforce Investment Boards—Identify the criteria the State has established to be used by the chief elected official(s) in the local areas for the appointment of local board members based on the requirements of section 117. (§§ 112(b)(6), 117(b).)

C. How will your State build the capacity of Local Boards to develop and manage high performing local workforce investment system? (§§ 111(d)(2) and 112(b)(14).)

D. Local Planning Process—Describe the State mandated requirements for local workforce areas' strategic planning. What assistance does the State provide to local areas to facilitate this process, (112(b)(2) and 20 CFR 661.350(a)(13).) including:

1. What oversight of the local planning process is provided, including receipt and review of plans and negotiation of performance agreements? and

2. How does the local plan approval process ensure that local plans are consistent with State performance goals and State strategic direction?

E. Regional Planning (§§ 112(b)(2), 116(c).)

1. Describe any intra-State or inter-State regions and their corresponding performance measures.

2. Include a discussion of the purpose of these designations and the activities (such as regional planning, information sharing and/or coordination activities) that will occur to help improve performance. For example, regional planning efforts could result in the sharing of labor market information or

in the coordination of transportation and support services across the boundaries of local areas.

3. For inter-State regions (if applicable), describe the roles of the respective Governors and State and local Boards.

F. Allocation Formulas (112(b)(12)).
1. If applicable, describe the methods and factors (including weights assigned to each factor) your State will use to distribute funds to local areas for the 30% discretionary formula adult employment and training funds and youth funds pursuant to §§ 128(b)(3)(B) and 133(b)(3)(B).

2. Describe how the allocation methods and factors help ensure that funds are distributed equitably throughout the State and that there will be no significant shifts in funding levels to a local area on a year-to-year basis.

3. Describe the State's allocation formula for dislocated worker funds under § 133(b)(2)(B).

4. Describe how the individuals and entities on the State board were involved in the development of the methods and factors, and how the State consulted with chief elected officials in local areas throughout the State in determining such distribution.

G. Provider Selection Policies (§§ 112(b)(17)(A)(iii), 122, 134(d)(2)(F)).

1. Identify the policies and procedures, to be applied by local areas, for determining eligibility of local level training providers, how performance information will be used to determine continuing eligibility and the agency responsible for carrying out these activities.

2. Describe how the State solicited recommendations from local boards and training providers and interested members of the public, including representatives of business and labor organizations, in the development of these policies and procedures.

3. Describe how the State will update and expand the State's eligible training provider list to ensure it has the most current list of providers to meet the training needs of customers?

4. Describe the procedures the Governor has established for providers of training services to appeal a denial of eligibility by the local board or the designated State agency, a termination of eligibility or other action by the board or agency, or a denial of eligibility by a One-Stop operator. Such procedures must include the opportunity for a hearing and time limits to ensure prompt resolution.

5. Describe the competitive and non-competitive processes that will be used at the State level to award grants and contracts for activities under title I of

WIA, including how potential bidders are being made aware of the availability of grants and contracts. (§ 112(b)(16).)

6. Identify the criteria to be used by local boards in awarding grants for youth activities, including criteria that the Governor and local boards will use to identify effective and ineffective youth activities and providers of such activities. (§ 112(b)(18)(B).)

H. One-Stop Policies (§ 112(D)(14)).
1. Describe how the services provided by each of the required and optional One-Stop partners will be coordinated and made available through the One-Stop system. Include how the State will consolidate Wagner-Peyser Act funds to avoid duplication of core services. (§ 112(b)(8)(A).)

2. Describe how the State helps local areas identify areas needing improvement and how technical assistance will be provided.

3. Identify any additional State mandated One-Stop partners (such as TANF or Food Stamp Employment and Training) and how their programs and services are integrated into the One-Stop Career Centers.

I. Oversight/Monitoring Process—Describe the monitoring and oversight criteria and procedures the State utilizes to move the system toward the State's vision and achieve the goals identified above, such as the use of mystery shoppers, performance agreements. (§ 112(b)(14).)

J. Grievance Procedures.—Attach a copy of the State's grievance procedures for participants and other affected parties (including service providers.) (§ 122(g) and 181(cc).)

K. Describe the following State policies or procedures that have been developed to facilitate effective local workforce investment systems (§§ 112(b)(17)(A) and 112 (b)(2).):

1. State guidelines for the selection of One-Stop providers by local boards;

2. Procedures to resolve impasse situations at the local level in developing memoranda of understanding (MOUs) to ensure full participation of all required partners in the One-Stop delivery system;

3. Criteria by which the State will determine if local Boards can run programs in-house;

4. Performance information that on-the-job training and customized training providers must provide;

5. Reallocation policies;

6. State policies for approving local requests for authority to transfer funds (not to exceed 20%) between the Adult and Dislocated Worker funding streams at the local level;

7. Policies related to displaced homemakers, nontraditional training for

low-income individuals, older workers, low-income individuals, disabled individuals and others with multiple barriers to employment and training;

8. If you did not delegate this responsibility to local boards, provide your State's definition regarding the sixth youth eligibility criterion at section 101(13)(C)(iv) ("an individual who requires additional assistance to complete an educational program, or to secure and hold employment"). (§§ 112(b)(18)(A) and 20 CFR 664.210.)

IX. Service Delivery

Describe the approaches the State will use to provide direction and support to local Boards and the One-Stop Career Center delivery system on the strategic priorities to guide investments, structure business engagement, and inform service delivery approaches for all customers. (§§ 112(b)(17)(A) Activities could include:

A. One-Stop Service Delivery Strategies (§§ 112(b)(2) and 111(d)(2))

1. How will the services provided by each of the required and optional One-Stop partners be coordinated and made available through the One-Stop system? (§ 112(b)(8)(A).)

2. How are youth formula programs funded under § 128(b)(2)(A) integrated in the One-Stop system?

3. What minimum service delivery requirements does the State mandate in a comprehensive One-Stop Center or an affiliate site?

4. What tools and products has the State developed to support service delivery in all One-Stop Centers Statewide?

5. What models/templates/approaches does the State recommend and/or mandate for service delivery in the One-Stop Centers? For example, do all One-Stop Centers have a uniform method of organizing their service delivery to business customers? Is there a common individual assessment process utilized in every One-Stop Center? Are all One-Stop Centers required to have a resource center that is open to anyone?

B. Workforce Information

A fundamental component of a demand-driven workforce investment system is the integration and application of the best available State and local workforce information including, but not limited to, economic data, labor market information, census data, private sources of workforce information produced by trade associations and others, educational data, job vacancy surveys, transactional data from job boards, and information obtained directly from businesses.

(§§ 111(d)(8), 112(b)(1), and 134(d)(2)(E).)

1. Describe how the State will integrate workforce information into its planning and decision making at the State and local level, including State and local Boards, One-Stop operations, and case manager guidance.

2. Describe the approach the State will use to disseminate accurate and timely workforce information to businesses, job seekers, and employment counselors, in easy to use formats that are readily accessible within One-Stop Career Centers and at remote locations such as libraries, schools, worksites, and at home.

3. Describe how the State's Workforce Information Core Products and Services Plan is aligned with the WIA State Plan to ensure that the investments in core products and services support the State's overall strategic direction for workforce investment.

4. Describe how State workforce information products and tools are coordinated with the national electronic workforce information tools including America's Career Information Network and Career Voyages.

C. Adults and Dislocated Workers

1. Core Services. § 112(b)(17)(a)(i).

a. Describe state strategies and policies to ensure adults and dislocated workers have universal access to the minimum required core services as described in § 134(d)(2).

b. Describe how the state will ensure the three-tiered service delivery strategy for labor exchange services for job seekers and employers authorized by the Wagner-Peyser Act includes: (1) Self-service, (2) facilitated self-help service, and (3) staff-assisted service, and is accessible and available to all customers at the local level.

c. Describe how the state will integrate resources provided under the Wagner-Peyser Act and WIA title I for adults and dislocated workers as well as resources provided by required One-Stop partner programs, to deliver core services.

2. Intensive Services. (§ 112(b)(17)(a)(i).) Describe State strategies and policies to ensure adults and dislocated workers who meet the criteria in § 134(d)(3)(A) receive intensive services as defined.

3. Training Services. (§ 112(b)(17)(A)(i).)

a. Describe the Governor's vision for increasing training access and opportunities for individuals including the investment of WIA title I funds and the leveraging of other funds and resources.

b. Individual Training Accounts:

i. What policy direction has the State provided for ITAs?

ii. Describe innovative training strategies used by the State to fill skills gaps. Include in the discussion the State's effort leverage additional resources to maximize the use of ITAs through partnerships with business, education (in particular, community and technical colleges), economic development agencies, and industry associations and how business and industry involvement is used to drive this strategy.

iii. Discuss the State's plan for committing all or part of WIA title I funds to training opportunities in high-growth, high-demand, and economically vital occupations.

iv. Describe the State's policy for limiting ITAs (e.g., dollar amount or duration).

v. Describe the State's current or planned use of WIA title I funds for the provision of training through apprenticeship.

vi. Identify State policies developed in response to changes to WIA regulations that permit the use of WIA title I financial assistance to employ or train participants in religious activities when the assistance is provided indirectly) such as through an ITA. (Note that the Department of Labor provides Web access to the equal treatment regulations and other guidance for the workforce investment system and faith-based and community organizations at <http://www.dol.gov/cfbci/legalguidance.htm>.)

c. Eligible Training Provider List. Describe the State's process for providing broad customer access to the statewide list of eligible training providers and their performance information including at every One-Stop Career Center. (§ 112(b)(17)(A)(iii).)

d. On-the-Job (OJT) and Customized Training (§§ 112(b)(17)(A)(i) and 134(b)). Based on the outline below, describe the State's major directions, policies and requirements related to OJT and customized training.

i. Describe the Governor's vision for increasing training opportunities to individuals through the specific delivery vehicles of OJT and customized training.

ii. Describe how the State:

- Identifies OJT and customized training opportunities;
- Markets OJT and customized training as an incentive to untapped employer pools including new business to the State, employer groups;
- Partners with high-growth, high-demand industries and economically vital industries to develop potential OJT and customized training strategies;

- Taps business partners to help drive the demand-driven strategy through joint planning, competency and curriculum development; and determining appropriate lengths of training, and

- Leverages other resources through education, economic development and industry associations to support OJT and customized training ventures.

4. Service to Specific Populations. (§ 112(b)(17)(A)(iv).)

a. Describe the State's strategies to ensure that the full range of employment and training programs and services delivered through the State's One-Stop delivery system are accessible to and will meet the needs of dislocated workers, displaced homemakers, low-income individuals migrant and seasonal farmworkers, women, minorities, individuals training for non-traditional employment, veterans, public assistance recipients and individuals with multiple barriers to employment (including older individuals, people with limited English-speaking proficiency, and people with disabilities.)

b. Describe the reemployment services you will provide to unemployment insurance claimants and the Worker Profiling services provided to claimants identified as most likely to exhaust their unemployment insurance benefits in accordance with section 3(c)(3) of the Wagner-Peyser Act.

c. Describe how the State administers the unemployment insurance work test and how feedback requirements (under § 7(a)(3)(F) of the Wagner-Peyser Act) for all UI claimants are met.

d. Describe the State's strategy for integrating and aligning services to dislocated workers provided through the WIA rapid response, WIA dislocated worker, and Trade Adjustment Assistance (TAA) programs. Does the State have a policy supporting co-enrollment for WIA and TAA?

e. How is the State's workforce investment system working collaboratively with business and industry and the education community to develop strategies to overcome barriers to skill achievement and employment experienced by the populations listed in paragraph (a.) above and to ensure they are being identified as a critical pipeline of workers?

f. Describe how the State will ensure that the full array of One-Stop services are available to individuals with disabilities and that the services are fully accessible?

g. Describe the role LVER/DVOP staff have in the One-Stop Delivery System. How will the State ensure adherence to

the legislative requirements for veterans' staff? How will services under this Plan take into consideration the agreement reached between the Secretary and the State regarding veterans' employment programs? (§§ 112(b)(7), 112 (b)(17)(B); 322, 38 U.S.C. chapter 41; and 20 CFR 1001.120.)

h. Department of Labor regulations at 29 CFR 37, require all recipients of Federal financial assistance from DOL to provide meaningful access to limited English proficient (LEP) persons. Federal financial assistance includes grants, training, equipment usage, donations of surplus property, and other assistance. Sub-recipients are also covered when Federal DOL funds are passed through from one recipient to a sub-recipient. Describe how the State will ensure access to services through the State's One-Stop delivery system by persons with limited English proficiency and how the State will meet the requirements of ETA Training and Employment Guidance Letter (TEGL) 26-02 (May 29, 2003), which provides guidance on methods of complying with the Federal rule.

i. Describe the State's strategies to enhance and integrate service delivery through the One-Stop delivery system for migrant and seasonal farm workers and agricultural employers. How will the State ensure that migrant and seasonal farm workers have equal access to employment opportunities through the State's One-Stop delivery system? Include the following:

- The number of Migrant and Seasonal Farmworkers (MSFWs) the State anticipates reaching annually through outreach to increase their ability to access core, intensive, and training services in the One-Stop Career Center System.

5. Priority of Service.

a. What procedures and criteria are in place under 20 CFR 663.600 for the Governor and appropriate local boards to direct One-Stop operators to give priority of service to public assistance recipients and other low-income individuals for intensive and training services if funds allocated to a local area for adult employment and training activities are determined to be limited? (§§ 112(b)(17)(A)(iv) and 134(d)(4)(E).)

b. What policies and strategies does the State have in place to ensure that, pursuant to the Jobs for Veterans Act (Pub. L. 107-288) (38 U.S.C. 4215), that priority of service is provided to veterans (and certain spouses) who otherwise meet the eligibility requirements for all employment and training programs funded by the U.S. Department of Labor, in accordance

with the provisions of TEGL 5-03 (9/16/03)?

D. Rapid Response (112(b)(17)(A)(ii))

Describe how your State provides Rapid Response services with the funds reserved under section 133(a)(2).

1. Identify the entity responsible for providing Rapid Response services. Describe how Rapid Response activities involve local boards and Chief Elected Officials. If Rapid Response activities are shared between the State and local areas, describe the functions of each and how funds are allocated to the local areas.

2. Describe the process involved in carrying out Rapid Response activities.

a. What methods are involved in receiving notice of impending layoffs (include WARN Act notice as well as other sources)?

b. What efforts does the Rapid Response team make to ensure that rapid response services are provided, whenever possible, prior to layoff date, onsite at the company, and on company time?

c. What services are included in Rapid Response activities? Does the Rapid Response team provide workshops or other activities in addition to general informational services to affected workers? How do you determine what services will be provided for a particular layoff (including layoffs that may be trade-affected)?

3. How does the State ensure a seamless transition between Rapid Response services and One-Stop activities for affected workers?

4. Describe how Rapid Response functions as a business service. Include whether Rapid Response partners with economic development agencies to connect employees from companies undergoing layoffs to similar companies that are growing and need skilled workers? How does Rapid Response promote the full range of services available to help companies in all stages of the economic cycle, not just those available during layoffs. How does the State promote Rapid Response as a positive, proactive, business-friendly service, not only a negative, reactive service?

5. What other partnerships does Rapid Response engage in to expand the range and quality of services available to companies and affected workers and to develop an effective early layoff warning network?

6. What systems does the Rapid Response team use to track its activities? Does the State have a comprehensive, integrated Management Information System that includes Rapid Response,

Trade Act programs, National Emergency Grants, and One-Stop activities?

7. Are Rapid Response funds used for other activities not described above; e.g., the provision of additional assistance to local areas that experience increased workers or unemployed individuals due to dislocation events?

E. Youth

ETA's strategic vision identifies youth most in need, such as out of school youth and those at risk, youth in foster care, youth aging out of foster care, youth offenders, children of incarcerated parents, homeless youth, and migrant and seasonal farmworker youth as those most in need of service. State programs and services should take a comprehensive approach to serving these youth, including basic skills remediation, helping youth stay in or return to school, employment, internships, help with attaining a high school diploma or GED, post-secondary vocational training, apprenticeships and enrollment in community and four-year colleges. (§ 112(b)(18).)

1. Describe your State's strategy for providing comprehensive, integrated services to eligible youth, including those most in need as described above. Include any State requirements and activities to assist youth who have special needs or barriers to employment, including those who are pregnant, parenting, or have disabilities. Include how the State will coordinate across State agencies responsible for workforce investment, foster care, education, human services, juvenile justice, and other relevant resources as part of the strategy. (§ 112(b)(18).)

2. Describe how coordination with Job Corps and other youth programs will occur. (§ 112(b)(18)(C).)

3. How does the State plan to utilize the funds reserved for Statewide activities to support the State's vision for serving youth? Examples of activities that would be appropriate investments of these funds include:

a. Utilizing the funds to promote cross agency collaboration;

b. Demonstration of cross-cutting models of service delivery;

c. Development of new models of alternative education leading to employment; or

d. Development of demand-driven models with business and industry working collaboratively with the workforce investment system and education partners to develop strategies for bringing these youth successfully into the workforce pipeline with the right skills.

e. Describe how your State will, in general, meet the Act's provisions regarding youth program design. (§§ 112(b)(18) and 129(c).)

F. Business Services (§§ 112(a) and 112(b)(2))

Provide a description of the State's strategies to improve the services to employers, including a description of how the State intends to:

1. Determine the employer needs in the local areas and on a Statewide basis.
2. Integrate business services, including Wagner-Peyser Act services, to employers through the One-Stop system.
3. Streamline administration of Federal tax credit programs within the One-Stop system to maximize employer participation. (20 CFR part 652.3(b), § 112(b)(17)(A)(i).)

G. Innovative Service Delivery Strategies (§ 112(b)(17)(A))

1. Describe innovative service delivery strategies the State has or is planning to undertake to maximize resources, increase service levels, improve service quality, achieve better integration or meet other key State goals. Include in the description the initiative's general design, anticipated outcomes, partners involved and funds leveraged (e.g., title I formula, Statewide reserve, employer contributions, education funds, non-WIA State funds).
2. If your State is participating in the ETA Personal Re-employment Account (PRA) demonstration, describe your vision for integrating PRAs as a service delivery alternative as part of the State's overall strategy for workforce investment.

H. Strategies for Faith-Based and Community-Based Organizations (§ 112(b)(17)(i))

Reaching those most in need is a fundamental element of the demand-driven system's goal to increase the pipeline of needed workers while meeting the training and employment needs of those most at risk. Faith-based and community organizations provide unique opportunities for the workforce investment system to access this pool of workers and meet the needs of business and industry. Describe those activities to be undertaken to: (1) increase the opportunities for participation of faith-based and community organizations as committed and active partners in the One-Stop delivery system; and (2) expand the access of faith-based and community-based organizations' clients and customers to the services offered by the One-Stops in the State. Outline those action steps designed to

strengthen State collaboration efforts with local workforce investment areas in conducting outreach campaigns to educate faith-based and community organizations about the attributes and objectives of the demand-driven workforce investment system. Indicate how these resources can be strategically and effectively leveraged in the State's workforce investment areas to help meet the objectives of the Workforce Investment Act.

X. State Administration

A. What technology infrastructure and/or management information systems does the State have in place to support the State and local workforce investment activities such as a One-Stop operating system designed to facilitate case management and service delivery across programs, a State job matching system, Web-based self service tools for customers, fiscal management systems, etc.? (§§ 111(d)(2), 112(b)(1), and 112(b)(8)(B).)

B. Describe the State's plan for use of the funds reserved for Statewide activities under WIA § 128 (a)(1).

C. Describe how any waivers or workflex authority (both existing and planned) will assist the State in developing its workforce investment system. (§§ 189(i)(1), 189 (i)(4)(A), and 192.)

D. Performance Management and Accountability. Improved performance and accountability for customer-focused results are central features of WIA. To improve, states need not only systems in place to collect data and track performance, but also systems to analyze the information and modify strategies to improve performance. (See Training and Employment Guidance Letter (TEGL) 15-03, Common Measures Policy, December 10, 2003.) In this section, describe how the State measures the success of its strategies in achieving its goals, and how the State uses this data to continuously improve the system.

1. Describe the State's performance accountability system, including any state-system measures and the state's performance goals established with local areas. Identify the performance indicators and goals the State has established to track its progress toward meeting its strategic goals and implementing its vision for the workforce investment system. For each of the core indicators, explain how the State worked with local boards to determine the level of the performance goals. Include a discussion of how the levels compare with the State's previous outcomes as well as with the State-adjusted levels of performance

established for other States (if available), taking into account differences in economic conditions, the characteristics of participants when they entered the program and the services to be provided. Include a description of how the levels will help the State achieve continuous improvement over the two years of the Plan. (§§ 112(b)(3) and 136(b)(3).)

2. Describe any targeted applicant groups under WIA title I, the Wagner-Peyser Act or title 38 chapters 41 and 42 (Veterans Employment and Training Programs) that the State tracks. (§§ 111(d)(2), 112(b)(3) and 136(b)(2)(C).)

3. Identify any performance outcomes or measures in addition to those prescribed by WIA and what process the State is using to track and report them.

4. Describe the State's common data system and reporting processes in place to track progress. Describe what data will be collected from the various One-Stop partners (beyond that required by DOL), use of quarterly wage records (including how your State accesses wage records), and how the Statewide system will have access to the information needed to continuously improve. (§ 112(b)(8)(B).)

5. Describe any actions the Governor and State Board will take to ensure collaboration with key partners and continuous improvement of the Statewide workforce investment system. (§§ 111(d)(2) and 112(b)(1).)

6. How do the State and local boards evaluate performance? What corrective actions (including sanctions and technical assistance) will the State take if performance falls short of expectations? How will the State and Local Boards use the review process to reinforce the strategic direction of the system? (§§ 111(d)(2), 112(b)(1), and 112(b)(3).)

7. What steps, has the State taken to prepare for implementation of new reporting requirements against the common performance measures as described in Training and Employment Guidance Letter (TEGL), 15-03, December 10, 2003, Common Measures Policy? In addition, what is the State's plan for gathering baseline data and establishing performance targets for the common measures? **Note:** ETA will issue additional guidance on reporting requirements for common measures.

8. Include a proposed level for each performance measure for each of the two program years covered by the Plan. While the plan is under review, the state will negotiate with the respective ETA Regional Administrator to set the appropriate levels for the next two years. States must identify the

performance indicators required under section 136, and, for each indicator, the State must develop an objective and quantifiable performance goal for two program years. States are encouraged to address how the performance goals for local workforce investment areas and training provides will help them attain their statewide performance goals. (§§ 112(b)(3) and 136.)

E. Administrative Provisions.

1. Provide a description of the appeals process referred to in § 116(a)(5)(m).

2. Describe the steps taken by the State to ensure compliance with the non-discrimination requirements outlined in § 188.

XI. Assurances

1. The State assures that it will establish, in accordance with section 184 of the Workforce Investment Act, fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State through the allotments made under sections 127 and 132. (§ 112(b)(11).)

2. The State assures that it will comply with section 184(a)(6), which requires the Governor to, every two years, certify to the Secretary, that—

a. The State has implemented the uniform administrative requirements referred to in section 184(a)(3);

b. The State has annually monitored local areas to ensure compliance with the uniform administrative requirements as required under section 184(a)(4); and

c. The State has taken appropriate action to secure compliance with section 184 (a)(3) pursuant to section 184(a)(5). (§ 184(a)(6).)

3. The State assures that the adult and youth funds received under the Workforce Investment Act will be distributed equitably throughout the State, and that no local areas will suffer significant shifts in funding from year to year during the period covered by this Plan. (§ 112(b)(12)(B).)

4. The State assures that veterans will be afforded employment and training activities authorized in section 134 of the Workforce Investment Act, and the activities authorized in chapters 41 and 42 of title 38 U.S. code. The State assures that it will comply with the veterans priority established in the Jobs for Veterans Act. (38 U.S.C. 4215.)

5. The State assures that the Governor shall, once every two years, certify one local board for each local area in the State. (§ 117(c)(2).)

6. The State assures that it will comply with the confidentiality requirements of section 136(f)(3).

7. The State assures that no funds received under the Workforce Investment Act will be used to assist, promote, or deter union organizing. (§ 181(b)(7).)

8. The State assures that it will comply with the nondiscrimination provisions of section 188, including an assurance that a Methods of Administration has been developed and implemented (§ 188.)

9. The State assures that it will collect and maintain data necessary to show compliance with the nondiscrimination provisions of section 188. (§ 185.)

10. The State assures that it will comply with the grant procedures prescribed by the Secretary (pursuant to the authority at section 189(c) of the Act) which are necessary to enter into grant agreements for the allocation and payment of funds under the Act. The procedures and agreements will be provided to the State by the ETA Office of Grants and Contract Management and will specify the required terms and conditions and assurances and certifications, including, but not limited to, the following:

- General Administrative Requirements:

- 29 CFR part 97—Uniform Administrative Requirements for State and Local Governments (as amended by the Act).

- 29 CFR part 96 (as amended by OMB Circular A-133)—Single Audit Act.

- OMB Circular A-87—Cost Principles (as amended by the Act).

- Assurances and Certifications:

- SF 424 B—Assurances for Non-construction Programs.

- 29 CFR part 37—Nondiscrimination and Equal Opportunity Assurance (and regulation) 29 CFR 37.20.

- CFR part 93—Certification Regarding Lobbying (and regulation).

- 29 CFR part 98—Drug Free Workplace and Debarment and Suspension Certifications (and regulation).

- Special Clauses/Provisions:

Other special assurances or provisions as may be required under Federal law or policy, including specific appropriations legislation, the Workforce Investment Act, or subsequent Executive or Congressional mandates.

11. The State certifies that the Wagner-Peyser Act Plan, which is part of this document, has been certified by the State Employment Security Administrator.

12. The State certifies that veterans' services provided with Wagner-Peyser Act funds will be in compliance with 38 U.S.C. chapter 41 and 20 CFR part 1001.

13. The State certifies that Wagner-Peyser Act-funded labor exchange activities will be provided by merit-based public employees in accordance with DOL regulations.

14. The State assures that it will comply with the MSFW significant office requirements in accordance with 20 CFR part 653.

15. The State certifies it has developed this Plan in consultation with local elected officials, local workforce boards, the business community, labor organizations and other partners.

16. As a condition to the award of financial assistance from the Department of Labor under title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA title I—financially assisted program or activity;

- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA title I—financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA title I—financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

17. The State assures that funds will be spent in accordance with the

Workforce Investment Act and the Wagner-Peyser Act and their regulations, written Department of Labor Guidance implementing these laws, and all other applicable Federal and State laws and regulations.

Attachment A

ETA Regional Administrators: January 2005

Region 1—Boston/New York

Douglas Small, Regional Administrator, U.S. Department of Labor/ETA, JFK Federal Building, Room E-350, Boston, Massachusetts 02203, (617) 788-0170, Fax: (617) 788-0101, *Small.Douglas@dol.gov*.

Region 2—Philadelphia

Lenita Jabobs-Simmons, Regional Administrator, U.S. Department of Labor/ETA, The Curtis Center, 170 South Independence Mall West, Suite 825 East, Philadelphia, Pennsylvania 19106-3315, (215) 861-5205, Fax: (215) 861-5205, *Jacobs-simmons.lenita@dol.gov*.

Region 3—Atlanta

Helen Parker, Regional Administrator, U.S. Department of Labor/ETA, Atlanta Federal Center, Rm. 6M12, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-2092, Fax: (404) 562-2149, *parker.helen@dol.gov*.

Region 4—Dallas/Denver

Joseph C. Juarez, Regional Administrator, U.S. Department of Labor/ETA, Federal Building, Rm. 317, 525 Griffin Street, Dallas, Texas 75202, (214) 767-8263, Fax: (214) 767-5113, *Juarez.joseph@dol.gov*.

Region 5—Chicago/Kansas City

Byron Zuidema, Regional Administrator, U.S. Department of Labor/ETA, 230 S. Dearborn Street, Rm. 628, Chicago, Illinois 60604, (312) 596-5400, Fax: (312) 596-5401, *Zuidema.byron@dol.gov*.

Region 6—San Francisco/Seattle

Richard Trigg, Regional Administrator, U.S. Department of Labor/ETA, 71 Stevenson Street, Rm. 830, San Francisco, California 94119-3767, (415) 975-4610, Fax: (415) 975-4612, *trigg.richard@dol.gov*.

Name of WIA Title I Grant Recipient Agency: _____

Attachment B

Program Administration Designees and Plan Signatures

Name of WIA Title I Grant Recipient Agency: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

Name of State WIA Title I Administrative Agency (if different from the Grant Recipient): _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

Name of WIA Title I Signatory Official: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

Name of WIA Title I Liaison: _____
Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

Name of Wagner-Peyser Act Grant Recipient/State Employment Security Agency: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

Name and title of State Employment Security Administrator (Signatory Official): _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

E-mail Address: _____

As the Governor, I certify that for the State/Commonwealth of _____

_____, the agencies and officials designated above have been duly designated to represent the State/Commonwealth in the capacities indicated for the Workforce Investment Act, title I, and Wagner-Peyser Act grant programs. Subsequent changes in the designation of officials will be provided to the U.S. Department of Labor as such changes occur.

I further certify that we will operate our Workforce Investment Act and Wagner-Peyser Act programs in accordance with this Plan and the assurances herein.

Typed Name of Governor: _____

Signature of Governor: _____

Date: _____

Attachment C

Optional Table for State Performance Indicators and Goals¹

WIA requirement at section 136(b)	Corresponding performance indicator(s)	Previous year performance	Performance goals out-years		
			1	2	3
Adults: Entry into Unsubsidized Employment 6-Months Retention in Unsubsidized Employment 6-Months Earnings received in Unsubsidized Employment Attainment of Educational or Occupational Skills Credential					
Dislocated Workers: Entry into Unsubsidized Employment 6-Months Retention in Unsubsidized Employment 6-Months Earnings received in Unsubsidized Employment Attainment of Educational or Occupational Skills Credential					
Youth Aged 19-21: Entry into Unsubsidized Employment 6-Months Retention in Unsubsidized Employment 6-Months Earnings received in Unsubsidized Employment Attainment of Educational or Occupational Skills Credential					
Youth 14-18: Attainment of Basic, Work Readiness and/or Occupational Skills Attainment of Secondary School Diplomas/Equivalents Placement and Retention in Post-Secondary Education/Training, or Placement in Military, Employment, Apprenticeships					

WIA requirement at section 136(b)	Corresponding performance indicator(s)	Previous year performance	Performance goals out-years		
			1	2	3
Participant Customer Satisfaction Employer Customer Satisfaction Additional State-Established Measures					

¹ Further guidance, including definitions of specific indicators, will be provided separately.

Attachment D

Local Planning Guidance for Single Workforce Investment Area States

I. Local Plan Submission

Section 118 of the Workforce Investment Act requires that the Board of each local workforce investment area, in partnership with the appropriate chief elected official, develop and submit a comprehensive Local Plan for activities under title I of WIA to the Governor for his or her approval. In States where there is only one local workforce investment area, the Governor serves as both the State and local Chief Elected Official. In this case, the State must submit both the State and Local Plans to the Department of Labor for review and approval. States may (1) submit their Local Plan as an attachment to the State Plan or (2) include these elements within their State Plan, and reference them in an attachment.

The State Planning Guidance on plan modifications and the plan approval process applies to a single workforce investment area State Local Plan, with one addition: The Department will approve a Local Plan within ninety days of submission, unless it is inconsistent with the Act and its implementing regulations, or deficiencies in activities carried out under the Act have been

identified and the State has not made acceptable progress in implementing corrective measures. (§ 112(c).)

II. Plan Content

In the case of single workforce investment area States, much of the Local Plan information required by section 118 of WIA will be contained in the State Plan. At a minimum, single workforce investment area State Local Plans shall contain the additional information described below, and any other information that the Governor may require. For each of the questions, if the answers vary in different areas of the State, please describe those differences.

A. Plan Development Process

1. Describe the process for developing the Local Plan. Describe the process and timeline used to provide an opportunity for public comment, including how local Chief Elected Officials, representatives of businesses and labor organizations, and other appropriate partners provided input into the development of the Local Plan, prior to the submission of the Plan. (§ 118(b)(7).)

2. Include with the local Plan any comments that represent disagreement with the Plan. (§ 118(c)(3).)

B. Services

1. Describe the One-Stop system(s) that will be established in the State.

Describe how the system(s) will ensure the continuous improvement of eligible providers of services and ensure that such providers meet the employment and training needs of employers, workers and job seekers throughout the State. Describe the process for the selection of One-Stop operator(s), including the competitive process used or the consortium partners. (§ 118(b)(2)(A).)

2. Describe and assess the type and availability of youth activities, including an identification of successful providers of such activities. (§ 118(b)(6).)

C. System Infrastructure

1. Identify the entity responsible for the disbursement of grant funds, as determined by the Governor. Describe how funding for areas within the State will occur. Provide a description of the relationship between the State and within-State areas regarding the sharing of costs where co-location occurs. (§ 118(b)(8).)

2. Describe the competitive process to be used to award the grants and contracts in the State for WIA title I activities. (§ 118(b)(9).)

[FR Doc. 05-7159 Filed 4-11-05; 8:45 am]

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Federal Register

**Tuesday,
April 12, 2005**

Part IV

Department of Labor

Employment and Training Administration

**Workforce Investment Act: Revisions to
the Workforce Investment Act Title I,
Wagner Peyser Act and the Senior
Community Service Employment Program
Unified Planning Guidance; Notice**

DEPARTMENT OF LABOR**Employment and Training
Administration****Workforce Investment Act: Revisions
to the Workforce Investment Act Title
I, Wagner Peyser Act and the Senior
Community Service Employment
Program Unified Planning Guidance;
Notice**

AGENCY: Employment and Training
Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide interested parties with the revisions to portions of the "Workforce Investment Act: Final Unified Planning Guidance: Notice" related to title I of the Workforce Investment Act of 1998, the Wagner Peyser Act and the Senior Community Service Employment Program (SCSEP) under title V of the Older Americans Act, for use by States. The Department is anticipating the reauthorization of the Workforce Investment Act (WIA) within the next two years. Therefore, the Employment and Training Administration (ETA) is requiring revisions to the Unified Plan related to WIA and Wagner-Peyser only for the first two years of the five-year planning cycle. For SCSEP, States have the option of submitting a two year plan as well. "Options for programs funded by the U.S. Department of Education that are included in a State's Five-year Strategic Unified Plan also are discussed in this notice."

The Unified Planning Guidance and Instructions provide a framework for the collaboration of Governors, Local Elected Officials, businesses and other partners to continue the development of workforce investment systems that address customer needs; deliver integrated, user-friendly services; and are accountable to the customers and the public.

FOR FURTHER INFORMATION CONTACT: Ms. Gay Gilbert, Administrator, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S4231, Washington, DC 20210. Telephone: (202) 693-3980 (voice) (This is not a toll free number) or (202) 693-7755 (TTY). Information may also be found at the Web site—<http://www.doleta.gov/usworkforce>.

DATES: The effective date of this document is April 12, 2005. Due date for Plan submission is May 31, 2005.

SUPPLEMENTARY INFORMATION: The Workforce Investment Act (WIA or Act), Pub. L. 105-220 (August 7, 1998) provides the framework for a reformed public workforce investment system

designed to meet the needs of the nation's employers, job seekers and those who want to further their careers. This document updates the DOL provisions of the interagency planning guidelines for the State Unified Plans under sec. 501 of the Act, to provide guidance for states which choose to submit a Unified Plan to meet the WIA title I State Plan requirements for PY 2005 and 2006. Options for programs funded by the U.S. Department of Education that are included in a State's Five-year Strategic Unified Plan also are discussed in this notice.

In the context of the 21st century innovation economy, the public workforce investment system has a critical role to play at every level—local, State, and Federal—to ensure a skilled and competitive workforce. To effectively drive the economic growth of our communities and the nation and to provide the workers of this country with the right skills and opportunities for good jobs with good pay and career pathways, the public investments in workforce development need to be strategic. Strategies for investment need to embrace new methods of engagement with strategic partners as well as new service delivery paradigms that address the ever-changing economy and labor market. Innovation and technology are continuously changing the nature of work at an accelerated pace. Therefore, the strategic planning process for workforce investment must be dynamic, fluid, and future oriented.

The Workforce Investment Act (WIA) of 1998 created dramatic changes to the workforce system. With the overarching goal to streamline, consolidate, and integrate a wide array of employment and training programs, system changes spanned every facet of operation including governance, administration and funding, and service delivery. The vision is for an integrated workforce investment system better able to respond to the needs of its customers. The framework of the Workforce Investment Act embodies principles that remain critical to the strategic planning process in today's economy.

Since the passage of WIA, the workforce investment system broadly has made great strides in implementing the principles described above. However, there remains significant opportunity for States and local areas to utilize the framework of WIA to realize the vision these principles reflect. The changes in the WIA State Planning process reflected in this document are intended to facilitate a realization of that vision as well as to set the stage for the planning process in the context of the 21st century economy.

The Department of Labor sees as one of its primary roles providing leadership and guidance to support a system that meets the objectives of Title I of WIA, and in which State and local partners have flexibility to design systems and deliver services in a manner designed to achieve the goals for WIA based on their particular needs. In the context of the 21st century innovation economy, the workforce investment system has a critical role to play at every level—local, State, and Federal—to ensure a skilled and competitive workforce. To effectively drive the economic growth of our communities and the nation and to provide the workers of this country with the right skills and opportunities for good jobs with good pay and career pathways, the public investments in workforce development need to be strategic. Strategies for investment need to embrace new methods of engagement with strategic partners as well as new service delivery paradigms that address the ever-changing economy and labor market. Innovation and technology are continuously changing the nature of work at an accelerated pace. Therefore, the strategic planning process for workforce investment must be dynamic, fluid, and future oriented.

Signed at Washington, DC, this 5th day of April, 2005.

Emily Stover DeRocco,

*Assistant Secretary of Labor, Employment
and Training Administration.*

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State Unified Plan Planning Guidance

A. Statement of Purpose

The purpose of this document is to provide guidance to States which submit a State Unified Plan authorized by title V, section 501 of the Workforce Investment Act of 1998 (WIA). The State Unified Plan Planning Guidance facilitates the development and submission of such a plan, which addresses two or more of the programs or activities specified at WIA Section 501(b)(2). This planning guidance updates the requirements for the WIA/Wagner Peyser Act and SCSEP portions of the Unified Plan. Options for programs funded by the U.S. Department of Education that are included in a State's Five-year Strategic Unified Plan also are discussed in this notice. Minor reference updates have been made for other programs authorized to be included in the Unified Plan. Therefore, States that choose to update the WIA/Wagner Peyser and/or SCSEP portions of a Unified Plan need only submit the updated Plan meeting the WIA/Wagner Peyser and/or SCSEP requirements of this document. States that choose to submit a new Unified Plan for PYs 2005–2007 for programs other than SCSEP, title I of WIA and the Wagner Peyser Act, will continue to use the guidance and instructions contained in this document, which have not been revised.

An approved Workforce Investment Plan is required in order for States to receive formula allotments under WIA title I and the Wagner Peyser Act. The current Workforce Investment Plans expire June 30, 2005. The Department of Labor is anticipating the reauthorization of WIA within the next two years. To meet the requirements of WIA and Wagner Peyser that States must have approved Plans in place to receive allotments, the Employment and Training Administration (ETA) is requiring States to only develop a Plan for the first two years of the five-year

strategic planning cycle. This will allow States to strategically approach their workforce investment policies for the immediate future, without requiring a full five-year unified plan, in light of the anticipated reauthorization of WIA. States which choose to submit the WIA Title I/Wagner Peyser Plan as part of a Unified Plan must comply with the requirements of these guidelines. Guidelines for the submission of a stand-alone WIA title I Plan are being issued separately.

Options for programs funded by the U.S. Department of Education. With respect to the programs originally authorized by the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) and the Adult Education and Family Literacy Act (AEFLA), the U.S. Department of Education already has issued guidance to States that discusses the option of extending the existing State plans with certain necessary revisions. This option of extending the existing plan applies as well to any subsections of a unified State plan that are related to programs under either Perkins III or AEFLA. A State's request to extend subsections of a unified plan must be submitted directly to the U.S. Department of Education and is due April 15, 2005, for Perkins III programs and April 1, 2005, for AEFLA programs. See Program Memorandum OVAE/DHSPCE FY 2005–03, Guidance for Submission of State Plan Revisions, Budgets, and Proposed Performance Levels for Perkins Grant Awards (OMB Control number 1830–0556), dated January 14, 2005, at the following Web site: <http://www.ed.gov/policy/sectech/guid/cte/memo011405.doc> See also Guide for the Development of a State Plan under the Adult Education and Family Literacy Act (OMB Control number 1830–0026).

The U.S. Department of Education anticipates that States will choose the option of extending their existing subsections of the currently approved unified State plans with only the revisions discussed in the above-referenced guidance. However, any State that chooses to submit new subsections related to the Perkins III or AEFLA programs in its unified State plan submitted in accordance with this notice must fully comply with all the planning, content, and other requirements that applied when the unified plan was originally developed, adopted, and submitted. These requirements are summarized together with references to the underlying statutory and regulatory requirements in the second section of this notice. With respect to the Perkins III programs, for example, these requirements include

State consultation of required parties and entities, public hearings, and adoption of the new State plan by the eligible agency, i.e., the State board that is the sole State agency responsible for the administration, or the supervision of the administration, of the State's vocational and technical education program. With respect to the AEFLA program, for example, these requirements include conducting a needs assessment.

B. Background

The State Unified Plan Planning Guidance provides a framework for the collaboration of Governors, Local Elected Officials, businesses and other partners to design and build workforce investment systems that address customer needs; deliver integrated, user-friendly services; and are accountable to the customers and the public. Only provisions related to the SCSEP, WIA title I and Wagner Peyser Act Plan have been changed. The Unified Plan requirements for other programs remain the same as those outlined in the January 14, 2000 version of this document (65 **Federal Register** 2464).

C. Section 501 Programs and Activities

Below is a listing of the programs and activities covered in Section 501 of WIA, along with the commonly used name. In this document, we generally refer to the activities and programs by their commonly used names. Should State staff need information on the programs listed, a staff contact is provided here also.

- Secondary Vocational Education programs (Perkins III/Secondary) Note that inclusion of this program in the Unified Plan requires prior approval of State legislature Administered by Department of Education, Office of Vocational and Adult Education. *Staff Contact:* Jennifer Brianas: 202–245–7808 (phone); 202–245–7837 (fax); (E-mail: Jennifer.brianas@ed.gov).

- Postsecondary Vocational Education programs (Perkins III/Postsecondary) Administered by Department of Education, Office of Vocational and Adult Education. *Staff Contact:* Jennifer Brianas: 202–245–7808 (phone); 202–245–7837 (fax); (E-mail: Jennifer.brianas@ed.gov).

- Tech-Prep Education (Title II of Perkins III) Administered by Department of Education, Office of Vocational and Adult Education. *Staff Contact:* Jennifer Brianas: 202–245–7808 (phone); 202–245–7837 (fax); (E-mail: Jennifer.brianas@ed.gov).

- Activities authorized under title I, Workforce Investment Systems (Workforce Investment Activities for

Adults, Dislocated Workers and Youth, or WIA title I) Administered by Department of Labor, Employment and Training Administration. *Staff Contact:* Christine D. Kulick: 202-693-3045 (phone); 202-693-3015 (fax); (E-mail: kulick.christine@dol.gov).

- Activities authorized under title II of WIA, Adult Education and Family Literacy (Adult Education and Family Literacy Programs) Administered by Department of Education, Office of Vocational and Adult Education. *Staff Contact:* Jennifer Brianas: 202-245-7808 (phone); 202-245-7837 (fax); (E-mail: Jennifer.brianas@ed.gov).

- Food Stamp Employment and Training Program, or FSET Administered by USDA, Food and Nutrition Service. *Staff Contact:* Micheal Atwell: 703-305-2449 (phone); 703-305-2486 (fax); (E-mail: micheal.atwell@fn.usda.gov).

- Activities authorized under chapter 2 of title II of the Trade Act of 1974 (Trade Act Programs) Administered by Department of Labor, Employment and Training Administration. *Staff Contact:* Terry Clark: 202-693-3707 (phone); 202-693-3585 (fax); (E-mail: clark.terry@dol.gov).

- Programs authorized under the Wagner-Peyser Act (Employment Service) Administered by Department of Labor, Employment and Training Administration. *Staff Contact:* Stephanie Cabell: 202-693-2784 (phone); 202-693-3015 (fax); (E-mail: cabell.stephanie@dol.gov).

- Programs authorized under part B of title I of the Rehabilitation Act of 1973, other than section 112 of such Act (Vocational Rehabilitation) Administered by Department of Education, Rehabilitation Services Administration. *Staff Contact:* Jerry Abbott: 202-245-7251 (phone); 202-245-7590 (fax); (E-mail: jerry.abbott@ed.gov).

- Programs authorized under chapters 41 and 42 of title 38, U.S.C., and 20 CFR 1001 and 1005 (Veterans Programs, including Veterans Employment, Disabled Veterans' Outreach Program, and Local Veterans' Employment Representative Program) Administered by Department of Labor, Veterans' Employment and Training Service. *Staff Contact:* Pamela Langley: 202-693-4708 (phone); 202-693-4755 (fax); (E-mail: langley.pamela@dol.gov).

- Programs authorized under State unemployment compensation laws (Unemployment Insurance) Administered by Department of Labor, Employment and Training Administration. *Staff Contacts:* William Coyne; 202-693-3202 (phone); 202-693-3975 (fax); (E-mail:

coyne.william@dol.gov); or Delores Mackall: 202-693-3183 (phone); 202-693-3975; (E-mail: mackall.delores@dol.gov).

- Programs authorized under part A of title IV of the Social Security Act (Temporary Assistance for Needy Families (TANF) administered by Health and Human Services, Administration for Children and Families. *Staff Contact:* Robert M. Shelbourne: 202-401-5150 (phone); 202-205-5887 (fax); (E-mail: RShelbourne@acf.hhs.gov).

- Programs authorized under title V of the Older Americans Act of 1965 (Senior Community Service Employment Program, or SCSEP) Administered by Department of Labor, Employment and Training Administration. *Staff Contact:* Ria-Moore Benedict: 202-693-3198 (phone); 202-693-3817 (fax); (E-mail: benedict.ria@dol.gov).

- Training activities funded by the Department of Housing and Urban Development under the Community Development Block Grants (CDBG) and Public Housing Programs. *Staff Contact:* Christopher Lord: 202-708-1506; Fax: 202-708-2706 (E-mail: Christopher.D.Lord@hud.gov).

- Programs authorized under the Community Services Block Grant Act (Community Services Block Grant, or CSBG) Administered by Health and Human Services, Administration for Children and Families. *Staff Contact:* Brandy RayNor: 202-205-5926 (phone); 202-402-5718 (fax); (E-mail: BRayNor@acf.hhs.gov).

While the statute specifies that States may submit a Unified Plan that includes "training activities" carried out by HUD, for a number of reasons, the Federal Partners agree that the unique nature of HUD's training activities warrants special treatment in a Unified Plan.

Accordingly, the final Unified Plan guidance provides for informal inclusion of HUD's programs. Since HUD programs are generally funded and implemented through local communities, and HUD's relevant State formula grant programs are not specifically employment and training programs, States that follow the final Unified Planning guidance will not automatically receive funding for HUD's formula programs through their Unified Plans. However, to encourage States to think strategically about developing a comprehensive workforce investment system—including how that system relates to the housing and workforce investment needs of the population receiving housing assistance—the final guidance includes references to HUD customers and services, as well as local

housing agencies, in the overarching questions pertaining to the Unified Plan's vision and goals, One-Stop service delivery, and needs assessment.

D. Submission of State Unified Plans

1. Submission—Time Requirements for Submission and Points of Contact

States have the option of submitting a Unified Plan to meet the requirements for submission of a state Workforce Investment Plan for Program Year 2005 and 2006. Due to the uncertainty relating to possible reauthorization of WIA, the Federal Government is only requiring the submission of the first two program years of the WIA/Wagner Peyser portion of the five-year Unified Plan. The due date for submission of a Unified Plan covering the first two-year period (July 1, 2005 through June 30, 2007) is *Tuesday, May 31, 2005*.

A State's request to extend subsections of a unified plan related to programs under either Perkins III or AEFLA must be submitted directly to the U.S. Department of Education and is due April 15, 2005, for Perkins III programs and April 1, 2005, for AEFLA programs. See Program Memorandum OVAE/DHSPCE FY 2005-03, Guidance for Submission of State Plan Revisions, Budgets, and Proposed Performance Levels for Perkins Grant Awards (OMB Control number 1830-0556), dated January 14, 2005, at the following Web site: <http://www.ed.gov/policy/sectech/guid/cte/memo011405.doc>. See also Guide for the Development of a State Plan under the Adult Education and Family Literacy Act (OMB Control number 1830-0026).

To reduce the reporting and processing burden, States have the option of submitting their WIA/Wagner-Peyser or SCSEP Unified Plan to either WIA.PLAN@DOL.GOV or to the designated Federal Coordinator for Plan Review and Approval (hereafter, "Federal Coordinator"), depending upon the submission option chosen by the State (as discussed below). The Federal Coordinator is Christine Kulick, e-mail: kulick.christine@dol.gov; phone: 202-693-3045. Her postal address is: Division of One-Stop Operations, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-4231, Washington, DC 20210, ATTN: Ms. Christine Kulick.

States are encouraged to send a single copy to WIA.PLAN@DOL.GOV (which is managed by the Federal Coordinator) or directly to the Federal Coordinator who will be responsible for distributing the Plan to each Federal agency whose programs are included in the Unified

Plan. The Federal Coordinator will also provide a copy of the Plan to the appropriate Department of Labor (DOL) Regional Office.

States have the option, however, of submitting their Unified Plans directly to each Federal Department whose programs are included in the Unified Plan, except for Perkins III and AEFLA simple extensions, which must be submitted to the U.S. Department of Education as stated above. States choosing this option are only required to send the Plan to the designated Federal Departmental State Unified Plan Contact (hereafter, "Departmental Contact"). The Departmental Contact will be responsible for ensuring that affected agencies and appropriate Regional Offices in that Department receive copies of the Unified Plan. For example, if a Unified Plan contains plans for both the Vocational Rehabilitation and the Postsecondary Vocational Education programs, both of which are administered by different agencies within the United States Department of Education, the State need only submit the Plan to the U.S. Department of Education once, and it should be sent to the Departmental Contact. Electronic mail addresses for the Departmental Contacts are as follows:

Department of Labor:

kulick.christine@dol.gov

Department of Education:

jerry.abbott@ed.gov

Department of Health and Human

Services: *Rshelbourne@acf.hhs.gov*

Department of Agriculture:

micheal.atwell@fns.usda.gov

Department of Housing and Urban
Development:

Christopher_D_Lord@hud.gov

2. Submission Options—Electronic, CD-ROM or Hard Copy Format

States have the option to submit Unified Plans in an electronic, hard copy, or CD-ROM format. The Federal Government is encouraging States to submit Unified Plans in electronic format to reduce the reporting and process burden and to ensure timely receipt by each Federal agency whose programs are included in the Unified Plan.

Electronic submission. States can submit a Unified Plan electronically either by posting it on an Internet Web site that is accessible to the Department or by transmitting it through electronic mail to the Department.

Posting Unified Plans on an Internet Web site. Under this option, a State need only post its Plan on an Internet Web site; inform the Federal Coordinator through electronic mail of the URL and

the location of the document on the Web site; provide contact information in the event of problems with accessing the Web site; and certify that no changes will be made to the version of the Plan posted on the Web site after it has been submitted to the Department, unless the Federal Coordinator or Federal agency overseeing the portion to be changed grants prior approval. The Federal Coordinator will ensure that Federal agencies whose programs are included in the Unified Plan, and the appropriate DOL Regional Office, receive the relevant information: the URL and the location of the document on the Web site; the contact information; and a copy of the statement certifying that there will be no changes.

Transmitting Unified Plans by electronic mail. Any State submitting its Plan by electronic mail should send it to *WIA.PLAN@DOL.GOV*. The Federal Coordinator, who manages this site, will ensure that Federal agencies whose programs are included in the Unified Plan receive a copy. The Federal Coordinator will also provide a copy to the appropriate DOL Regional Office.

Other considerations when using electronic submission. Unified Plan certifications with electronic signatures are acceptable. If a State chooses not to use an electronic signature, then the signature page must be submitted in hard copy. If a State chooses to submit its Unified Plan by transmitting it through electronic mail, the State must submit it in Microsoft Word or PDF format.

Hard copy or CD-ROM submission. States choosing to submit a hard copy should submit one copy of the Plan (with an original signature) to Christine Kulick, the Federal Coordinator for Plan Review and Approval (the address is provided above). The Federal Coordinator will ensure that Federal agencies whose programs are included in the Unified Plan, and the appropriate DOL Regional Office, receive copies of the Plan.

States submitting a Unified Plan on CD-ROM should submit one copy of the Plan to Christine Kulick, the Federal Coordinator for Plan Review and Approval. The Federal Coordinator will ensure that Federal agencies whose programs are included in the Unified Plan, and the appropriate DOL Regional Office, receive copies of the Plan. If the Plan on the CD-ROM does not include the signature of the Governor on the signature page, the State must submit separately an electronic signature or a signature page in hard copy. Plans submitted on a CD-ROM must be in Microsoft Word or PDF format.

It is important that States recognize that mail security requirements implemented by the U.S. Postal Service can result in delays in delivery of Plans whereas Federal Express and United Parcel Service deliveries have not been impacted.

States are encouraged to include a table of contents at the beginning of its State Unified Plan. This will facilitate access by the public to its component parts and aid the Federal Government in its review of the Unified Plan. States submitting a hard copy of their Plan are encouraged to provide an unbound copy to facilitate duplication.

The Federal Coordinator, without regard to which option the State uses for submission, will confirm receipt of the State Unified Plan within two workdays of receipt and indicate the date for the start of the review period. When a State submits an incomplete Plan, the period for review will not start until all required components of the Unified Plan have been received.

E. Federal Government Review and Approval of Unified Plan

Section 501(d)(2) of WIA States that a portion of a State Unified Plan covering an activity or program is to be considered to be approved by the appropriate Secretary at the end of the 90-day period beginning on the day the appropriate Secretary receives the portion unless the appropriate Secretary makes a written determination, during the 90-day period, that the portion is not consistent with the requirements of the Federal statute authorizing the activity or program or section 501(c)(3) of WIA. However, for Unified Plans that are submitted by May 31, 2005, for the two-year planning period, July 1, 2005 through June 30, 2007, the Department of Labor is committed to completing its review of those portions of the Unified Plan related to WIA/W-P and SCSEP within 30 days, to allow States additional time to prepare the Plan.

The appropriate Secretary, or his/her representative, will advise the State by letter, as soon as possible, that the portion of the Unified Plan over which his/her agency exercises administrative authority is approved or disapproved. If the plan is not approved, the appropriate Secretary, or his/her representative, will advise the State by letter that the portion of the Unified Plan over which his/her agency exercises administrative authority is not consistent with the requirements of the Federal statute authorizing the activity or program, or with section 501(c)(3) of WIA Unified Plan, and clearly indicate the reasons for disapproval and specify what additional information is required

or what action needs to be taken for the Unified Plan to be approved.

F. How To Use "Attachment B"

1. Forms for State Use

In Attachment B you will find three forms for use in submitting your State Unified Plan. These forms are available for electronic download, along with this entire guidance, at <http://www.doleta.gov/usworkforce>.

a. *Unified Plan Activities and Programs Checklist*: Please provide a list of the section 501 programs and activities you have included in your Plan. Use of this specific format is optional.

b. *Contact Information*: Please provide the contact information requested for each of the Section 501 programs and activities that you have included in your Plan. Programs and activities may be combined on one form if they have the same contact information. Use of this specific format is optional.

c. *Plan Signature(s)*: Please provide the required signatures as appropriate for the programs and activities you have included in your State Unified Plan. Use of this specific format is optional, but the wording on your signature page must be identical to that provided here.

2. Program Descriptions

Please respond fully to the general questions in the program descriptions section, as well as the additional questions that relate to the programs and activities that are included in your State's Unified Plan.

3. Certifications and Assurances

By signing the signature page(s), you are assuring or certifying those items in the Certifications and Assurances section that apply to the programs and activities you have included in your State's Unified Plan.

G. Modifications

Modifications may be needed in any number of areas to keep the Unified Plan a viable, living document over its two-year life. WIA regulations permit states to modify their state workforce investment plan at any time. In general, it is substantial changes to the Unified Plan that require a modification, *i.e.*, any change that significantly impacts the operation of the state's workforce investment system.

Plan modifications must be submitted to the Federal Coordinator, who will ensure that Federal agencies whose programs are included in the Unified Plan receive a copy, or to appropriate Federal agency, in accordance with the procedures of the affected agency. Prior

to submission of the modification for review and approval by the Federal Government, the designated State agency must circulate the modifications among the other state and/or local agencies that may be affected by the changes. Inclusion of a program in the state Unified Plan does not remove the statutory requirement for certain programs to annually review the plan and submit modifications as needed or to revise a plan to reflect newly negotiated performance levels.

Modifications to the Unified Plan are subject to the same public review and comment requirements that apply to the development of the original plan. States should direct any questions about the need to submit a plan modification to the Federal Coordinator, the Departmental Contacts listed above, or to the Regional Administrator or Regional Commissioner who exercises administrative authority over the activity or program(s) impacted by the modification.

H. Inquiries

General inquiries about the State Unified Plan process may be directed to the Federal Coordinator for Plan Review and Approval. The electronic mail address for the Federal Coordinator (Christine Kulick) is kulick.christine@dol.gov. The Federal Coordinator may be contacted by phone at 202-693-3045. Inquiries related to specific activities and programs can be directed to the staff contacts listed above.

II. National Strategic Direction

A. Vision and Goals Related to WIA Title I and Wagner Peyser

1. The purpose of this portion of this WIA and Wagner Peyser Unified Planning Guidance is to communicate national direction and strategic priorities for the workforce investment system. Broadly, the Federal goals for the workforce investment system for this planning cycle include:

a. Realizing the reforms envisioned by the Workforce Investment Act including:

i. Integrated, seamless service delivery through comprehensive One-Stop Career Centers;

ii. A demand-driven workforce system governed by business-led Workforce Investment Boards;

iii. Maximum flexibility in tailoring service delivery and making strategic investment in workforce development activities to meet the needs of State and local economies and labor markets;

iv. Customers making informed choices based on quality workforce

information and accessing quality training providers;

v. Increased fiscal and performance accountability; and

vi. A youth program targeting out-of-school populations with increased accountability for employment and/or increased secondary and post-secondary education outcomes.

b. Incorporating new statutory and regulatory program requirements that have evolved since the passage of WIA, such as priority of service for veterans as prescribed by the Jobs for Veterans Act (Pub. L. 107-288), (38 U.S.C. 4215).

c. Providing the national strategic priorities and direction in the following areas:

i. Implementation of a demand-driven workforce system;

ii. System reform to eliminate duplicative administrative costs and to enable increased training investments;

iii. Enhanced integration of service delivery through One-Stop delivery systems nationwide;

iv. A refocusing of the WIA youth investments on out-of-school youth populations, collaborative service delivery across Federal programs, and increased accountability;

v. Improved development and delivery of workforce information to support Workforce Investment Boards in their strategic planning and investments; providing tools and products that support business growth and economic development; and providing quality career guidance directly to students and job seekers and their counselors through One-Stop Career Centers;

vi. Faith-based and community-based organizations playing an enhanced role in workforce development;

vii. Enhanced use of waivers and workflex provisions in WIA to provide greater flexibility to States and local areas in structuring their workforce investment systems; and

viii. Reporting against common performance measures across Federal employment and training programs.

B. Demand-Driven Workforce Investment System

1. The realities of today's global economy make it imperative that the public workforce investment system be demand-driven, providing services that prepare workers to take advantage of new and increasing job opportunities in high growth/high demand and economically vital industries and sectors of the American economy. The foundation of this effort is partnerships that include the workforce system, business and industry, and education and training providers, that develop and

implement a strategic vision for economic development. Becoming demand-driven represents a major transformation of this system, which, for 40 years, has been primarily framed around individuals needs for service rather than focusing on both the needs of job seekers and the business community.

2. To be successful, the workforce investment system must begin today to prepare the workforce of tomorrow. Each year, the United States invests approximately \$15 billion into the workforce system. To ensure that this large investment is used effectively, it is imperative that all of the components of the workforce system at the national, State, and local levels become demand-driven and contribute to the economic well-being of communities and the nation by developing a qualified and competitive workforce. Current job opportunities must be known as well as where the good jobs will be in the future by (1) identifying the workforce needs in high-growth, high-demand and economically critical industries and the necessary preparation required to succeed in those occupations and (2) understanding the workforce challenges that must be addressed to ensure a prepared and competitive workforce. This requires all of the key players in the State and local system, including Governors and Local Elected Officials, State and Local Workforce Investment Boards (WIBs), State Workforce Agencies, and One-Stop Career Centers to:

- a. Have a firm grasp of their State and local economies;
- b. Strategically invest and leverage their resources;
- c. Build partnerships between industry leaders and educational institutions that develop solutions to workforce challenges; and
- d. Allocate training dollars to provide the skills and competencies necessary to support industry now and in the future.

3. The workforce investment system is a catalyst that links employers, economic development organizations, public agencies, and the education community to build and deliver innovative answers to workforce challenges.

4. Development of a demand driven strategic plan requires utilizing economic information and analysis to drive strategic investments, identifying strategic partners, and designing effective service delivery systems. Some of the important elements of a demand-driven strategic plan include the following:

- a. Economic analysis is a fundamental starting point for a demand-driven

approach to workforce investment. A wide array of workforce information and data, including economic indicators, labor market information, census data, educational data, transactional data, projections and data from the private sector, and one-on-one interviews with businesses needs to be collected and analyzed.

b. Workforce strategies that target industries that are high growth, high demand and critical to the State and/or local economy are most likely to support economic growth and provide individuals with the opportunities to get good jobs with good pay and career pathways.

c. Strategic partnerships among the workforce investment system, targeted businesses and industries, economic development agencies, and education and training providers (including K-12) provide a strong foundation for identifying workforce challenges and developing and implementing innovative workforce solutions focused on a workforce with the right skills. The workforce system must be the catalyst for bringing these target partnerships together.

d. A solutions-based approach that brings the right strategic partners and resources to the table promotes a comprehensive analysis of workforce challenges and also provides the synergy for successful, innovative workforce solutions and the opportunity to effectively leverage workforce investment resources.

e. A demand-driven workforce investment system ensures that the full array of assets available through the One-Stop delivery system is available to support individual workers as well as to provide solutions to workforce issues identified by business and industry.

f. Translating the demand for workers with the skills businesses need into demand-driven career guidance must be one of the human resource solutions provided broadly by the workforce investment system.

5. The WIA and Wagner Peyser related Unified Planning guidance includes new language in support of these principles which offers States an opportunity, in the context of the State Planning process, to formally articulate demand-driven goals and strategies tailored to the unique needs of the State.

C. System Reform and Increased Focus on Training

1. Workforce training is one of the major areas in which the President is focusing reform efforts. In April 2004, he challenged the workforce investment system at the State and local levels to eliminate unnecessary overhead costs

and simplify administration in order to preserve more resources for training. The system currently spends approximately 30% of appropriated funds each year on infrastructure and "other" costs as currently reported by States as part of their routine reporting under WIA. Some of these funds are wisely spent, but clearly more can be made available for training. The President has called for the system to double the number of individuals trained under major WIA grant programs. Through WIA reauthorization, additional reforms in support of these goals are anticipated.

2. The WIA State Plan provides States with a platform to promote greater efficiencies in the workforce system by articulating administrative policies for State and local governance processes. The State has multiple vehicles to increase consolidation and integration of the infrastructure through policies, required practices, provision of technical assistance and monitoring. The State also can articulate its goals for expenditures of resources for training in industries and occupations critical to the State's economy.

D. Enhanced Integration Through One-Stop Delivery System

1. One of the primary expectations of the workforce system under the WIA statutory framework is a seamless, integrated One-Stop delivery system. The expectation for an integrated service delivery system remains firmly embedded as a key principle of a demand-driven workforce system.

2. The goal of integration is to ensure that the full spectrum of community assets is used in the service delivery system, and to support human capital solutions for businesses, industry and individual customers. Different programs fund different types of services and serve different populations. These unique program features in the system provide both breadth and depth to the human capital solutions offered to businesses and industry. However, the assets go beyond program funding, and without integration of those assets, the system limits its impact and success.

3. The workforce system has had a vision of integration for over a decade, supported with the Federal investment in One-Stop Centers in the mid-1990s and later realized in statute with the passage of WIA. Despite many efforts, the vision of seamless, integrated service delivery remains unrealized in many areas. It is still all too common to visit local areas across the nation and find a One-Stop office within blocks of a separate "job service" or "affiliate" office or a comprehensive One-Stop

Center where programs are co-located, but with little integration. In addition, there is often a lack of consistency in policy and service delivery across workforce investment areas within a State, which causes customer confusion and frustration. While there are real challenges to achieving the vision of integration, it is a vision that can be realized. Due to strong leadership, creativity, and hard work at the State and local levels, a number of One-Stop Centers have overcome turf issues and administrative challenges to offer integrated service delivery.

4. Strong State leadership has been identified as one of the key success factors in achieving integration in One-Stop Centers. The WIA State Planning process offers a unique opportunity for the Governor and the State Workforce Investment Board to clearly articulate the State's goals for integration and to help remove any barriers. The Employment and Training Administration (ETA) is committed to working with States to support integration efforts.

E. New Vision for Serving Youth Most In Need

1. The Administration is committed to trying bold, innovative and flexible initiatives to prepare the most at-risk and neediest youth for jobs in our changing economy. ETA, in collaboration with the Departments of Education, Health and Human Services, and Justice, has developed a new strategic vision to more effectively and efficiently serve out-of-school and those at risk of dropping out-of-school (Training and Employment Guidance Notice No. 3-04). Regional Youth Forums were conducted in the fall of 2004 that brought together State youth leaders to develop similar partnerships at the State level, and to begin to develop a common vision and action plan for implementing cross-agency State approaches for serving the neediest youth.

2. Out-of-school youth (and those most at risk of dropping out) are an important part of the new workforce supply pipeline needed by businesses to fill job vacancies in a knowledge-based economy. WIA-funded youth programs should connect these youth with quality secondary and post-secondary educational opportunities and high-growth and other employment opportunities.

3. ETA's new vision for serving youth will present challenges for how State and local WIA programs interact and link with State and local education and economic development systems. To achieve this vision, States should

consider this new strategic approach and associated goals across four major areas:

a. *Alternative Education—Goal:* Provide leadership to ensure that youth served in alternative education programs will receive a high quality education that adheres to the State standards developed in response to the No Child Left Behind (NCLB) legislation.

b. *Demand of Business—Goal:* The investment of WIA youth resources will be demand-driven, assuring that youth obtain the skills needed by businesses so that they can succeed in the 21st century economy.

c. *Neediest Youth—Goal:* Investments will be prioritized to serve youth most in need including out-of-school youth (and those at risk of dropping out of school), youth in foster care, those aging out of foster care, youth offenders, children of incarcerated parents, homeless youth, and migrant and seasonal farmworker youth.

d. *Improved Performance—Goal:* Key initiatives will be implemented to assure that programs are performance-based and focused on outcomes.

4. ETA has developed strategic partnerships at the Federal level with the Department of Education's Office of Vocational and Adult Education, the Department of Health and Human Services' Administration for Children and Families, and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention. Through the State Planning process, Governors have the opportunity to promote strategic partnerships across State agencies serving youth to enhance service delivery and more effectively leverage available resources. ETA encourages Governors to play a key leadership role in enhancing intra-State coordination among these agencies and to develop cross-agency approaches for serving youth. The WIA State Planning process is a vehicle for driving a Statewide youth vision that ensures that previously marginalized youth become an important pipeline of workers.

F. A Stronger Workforce Information System

1. As discussed previously, a strong foundation of economic data and workforce information, along with the ability to analyze the data and transform it into easily understood intelligence, is one of the keys to effective strategic planning for a demand-driven workforce investment system. To achieve that vision, the workforce system needs to move beyond traditional labor market information strategies and develop a workforce information system that helps

drive both economic development and workforce investment for the State. In their lead role, States need to embrace a wide array of data sources, new strategies for making it available to customers, and consider alternative ways to invest and leverage public and private resources to build the State's workforce information system.

Workforce information is critical not only for driving the investments of the workforce system, but it is also a fundamental decision tool for the nation's businesses, students, workers, parents, guidance counselors, and education institutions. The development of workforce information is the responsibility broadly of Governors, State workforce agencies, State agencies designated under WIA as responsible for labor market information, State economic development agencies, and Local Workforce Investment Boards.

G. Effective Utilization of Faith-Based and Community-Based Organizations

1. President Bush signed Executive Order 13198 on January 29, 2001, with the goal of removing statutory, regulatory, and procedural barriers that prevent faith-based and community organizations (FBCOs) from participating in the provision of social services. The Department of Labor Center for Faith-based and Community Initiatives, created under the Executive Order has worked closely with ETA to help increase the opportunities for FBCOs to partner with the workforce investment system. As legal and regulatory barriers have been removed, the Department of Labor has been increasingly focusing on ways to integrate FBCOs into the WIA system at the local level including:

a. Expanding the access of faith-based and community organizations' clients and customers to the training, job and career services offered by the local One-Stop Centers;

b. Increasing the number of faith-based and community organizations serving as committed and active partners in the One-Stop delivery system.

2. By integrating the workforce system with the resources available through these organizations, the capacity of the workforce investment system to serve those most in need is significantly expanded. Continuing to promote integration of FBCOs remains a focal point for the President and the Department of Labor. States are encouraged to incorporate strategies that include FBCOs into their State Plans.

H. Increased Use of Flexibility Provisions in WIA

For the workforce system to be successful in promoting business prosperity and employment opportunities for workers, States must have the flexibility to design innovative programs based on local need and labor markets. WIA as it exists today provides significant opportunities to States to obtain waivers of statutory and regulatory requirements that may impede achieving the State's workforce goals. Therefore, one of the key focal points as States move into a new planning cycle is to encourage States to utilize the full range of flexibility offered under WIA's waiver and workflex provisions. The workflex option has not been utilized by States and may offer the greatest range of opportunity for States. ETA is committed to sharing the waiver strategies States have utilized to date and providing technical assistance to States considering requesting waivers. The State Unified Plan provides a vehicle for the State to identify waiver opportunities and to formally request waivers in concert with overall strategic planning. Waivers may be requested at other times as well.

I. Performance Accountability and Implementation of Common Performance Measures

1. Improved performance accountability for customer-focused results is a central feature of WIA and remains a strategic priority for the President and the Department of Labor. In an effective accountability system, a clear link should exist between the State's program design and the results achieved. The performance information should be available to and easily understood by all customers, stakeholders, and operators of the workforce investment system.

2. To enhance the management of the workforce system and the usability of performance information, the Department, in collaboration with other Federal agencies, has developed a set of common performance measures for Federally-funded training and employment programs. The value of common measures is the ability to describe in a similar manner the core purposes of the workforce system—did people find jobs; did people stay employed; and did earnings increase? Standardizing the definitions of the outcomes across programs simplifies reporting. Coupled with valid and accurate information, use of common measures provides a greater ability to compare and manage results.

3. It is ETA's intent to begin data collection in support of common measures effective July 1, 2005, for Program Year 2005. This was recently announced in Training and Employment Guidance Letter 18-04, "Announcing the soon-to-be-published Proposed Revisions to Existing Performance Reporting Requirements for the Implementation of Common Measures for title I of the Workforce Investment Act (WIA), the Wagner-Peyser Act (Employment Service (ES)/ Labor Exchange), the Trade Adjustment Assistance Reform Act (TAA), and title 38, chapter 41 Job Counseling, Training, and Placement Service (Veterans' Employment and Training Service (VETS))." Prior to the effective date, ETA will publish proposed revisions to reporting and recordkeeping requirements in support of common measures in a separate **Federal Register** Notice.

4. The common measures are an integral part of ETA's performance accountability system. ETA will continue to collect from states and grantees other data on program activities, participants, and outcomes necessary for program management, including data that support the existing WIA performance measures, and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

III. Unified Planning Instructions

Note: The statutes cited in parentheses refer to the authorizing legislation for each respective program. This unified planning guidance only relates to planning requirements; it does not affect the statutory and regulatory requirements relating to other aspects of programs included in the plan. References to the Welfare-to-Work program have been deleted due to the expiration of that program.

A. Vision and Priorities

WIA/Wagner Peyser Plan requirements:

1. Describe the Governor's vision for a Statewide workforce investment system. Provide a *summary* articulating the Governor's vision for utilizing the resources of the workforce system in support of the State's economic development that address the issues and questions below. States are encouraged to attach more detailed documents to expand upon any aspect of the summary response if available. (WIA § 112(a) and (b)(4)(A-C).)

2. What are the State's economic development goals for attracting, retaining and growing business and industry within the State? (§ 112(a) and (b)(4)(A-C).)

3. Given that a skilled workforce is a key to the economic success of every business, what is the Governor's vision for maximizing and leveraging the broad array of Federal and State resources available for workforce investment flowing through the State's cabinet agencies and/or education agencies in order to ensure a skilled workforce for the State's business and industry? (§ 112(a) and (b)(4)(A-C).)

4. Given the continuously changing skill needs that business and industry have as a result of innovation and new technology, what is the Governor's vision for ensuring a continuum of education and training opportunities that support a skilled workforce? (§ 112(a) and (b)(4)(A-C).)

5. What is the Governor's vision for bringing together the key players in workforce development including business and industry, economic development, education, and the workforce system to continuously identify the workforce challenges facing the State and to develop innovative strategies and solutions that effectively leverage resources to address those challenges? (§ 112(b)(10).)

6. What is the Governor's vision for ensuring that every youth has the opportunity to develop and achieve career goals through education and workforce training, including the youth most in need, such as out of school youth, homeless youth, youth in foster care, youth aging out of foster care, youth offenders, children of incarcerated parents, migrant and seasonal farmworker youth, and other youth at risk? (§ 112(a).)

7. Given the labor shortage that will continue to increase over the next 25 years, describe the Governor's vision for how it will ensure that older individuals receive workforce training that will prepare them to reenter the labor market and become a workforce solution for employers. (§ 112 (b)(17)(A)(iv).)

B. One-Stop Delivery System

1. Describe the State's comprehensive vision of an integrated service delivery system, including the role each program incorporated in the Unified Plan in the delivery of services through that system.

In answering this question, if your Unified Plan includes:

(a) WIA Title I and Wagner-Peyser Act and/or Veterans Programs:

(i.) Identify how the State will use WIA Title I funds to leverage other Federal, State, local, and private resources in order to maximize the effectiveness of such resources and to expand the participation of business, employees, and individuals in the

Statewide workforce investment system? (§ 112(b)(10).)

(ii.) What strategies are in place to address the national strategic direction discussed in Part I of this guidance, the Governor's priorities, and the workforce development issues identified through the analysis of the State's economy and labor market? (§ 112(a) and 112(b)(4)(D).)

(iii.) Based on the State's economic and labor market analysis, what strategies has the State implemented or plans to implement to identify and target industries and occupations within the State that are high growth, high demand, and vital to the State's economy? (§ 112(a) and 112(b)(4)(A).) The State may want to consider:

- Industries projected to add a substantial number of new jobs to the economy; or
- Industries that have a significant impact on the overall economy; or
- Industries that impact the growth of other industries; or
- Industries that are being transformed by technology and innovation that require new skill sets for workers; or
- Industries that are new and emerging and are expected to grow.

(iv.) What strategies are in place to promote and develop ongoing and sustained strategic partnerships that include business and industry, economic development, the workforce system, and education partners (K-12, community colleges, and others) for the purpose of continuously identifying workforce challenges and developing solutions to targeted industries' workforce challenges? (§ 112(b)(8).)

(v.) What State strategies are in place to ensure that sufficient system resources are being spent to support training of individuals in high growth/high demand industries? (§ 112(b)(4)(A) and 112(b)(17)(A)(i).)

(vi.) What workforce strategies does the State have to support the creation, sustainability, and growth of small businesses and support for the workforce needs of small businesses as part of the State's economic strategy? (§ 112(b)(4)(A) and 112(b)(17)(A)(i).)

(vii.) How are the funds reserved for Statewide activities used to incent the entities that make up the State's workforce system at the State and local levels to achieve the Governor's vision and address the national strategic direction identified in part I of this guidance? (§ 112(a).)

(viii.) Describe the State's strategies to promote collaboration between the workforce system, education, human services, juvenile justice, and others to better serve youth that are most in need

and have significant barriers to employment, and to successfully connect them to education and training opportunities that lead to successful employment. (§ 112(b)(18)(A).)

(ix.) Describe the State's strategies to identify State laws, regulations, policies that impede successful achievement of workforce development goals and strategies to change or modify them. (§ 112(b)(2).)

(x.) Describe how the State will take advantage of the flexibility provisions in WIA for waivers and the option to obtain approval as a workflex State pursuant to § 189(i) and § 192.

2. Describe the actions the State has taken to ensure an integrated One-Stop service delivery system Statewide. (§§ 112(b)(14) and 121.)

a. What State policies and procedures are in place to ensure the quality of service delivery through One-Stop Centers such as development of minimum guidelines for operating comprehensive One-Stop Centers, competencies for One-Stop Career Center staff or development of a certification process for One-Stop Centers? (§ 112(b)(14).)

b. What policies or guidance has the State issued to support maximum integration of service delivery through the One-Stop delivery system for both business customers and individual customers? (§ 112(b)(14).)

c. What actions has the State taken to promote identifying One-Stop infrastructure costs and developing models or strategies for local use that support integration? (§ 112(b)(14).)

d. How does the State use the funds reserved for Statewide activities pursuant to (§ 129(b)(2)(B) and 134(a)(2)(B)(v) to assist in the establishment and operation of One-Stop delivery systems? (§ 112(b)(14).)

e. How does the State ensure the full spectrum of assets in the One-Stop delivery system support human capital solutions for businesses and individual customers broadly? (§ 112(b)(14).)

C. Plan Development and Implementation

1. Describe the methods used for joint planning and coordination of the programs and activities included in the Unified Plan. (WIA § 501(c)(3)(A).)

State Consultation with Local Areas in Development of Plan: The authorizing statutes for many of the programs that may be included in a Unified Plan require that the State Plan be developed in consultation with various public and private entities, as well as members of the general public. Some statutes also require formal public hearings. Depending upon the programs

that a State chooses to include in its Unified Plan, it may be possible for the State to satisfy many of these consultation requirements through a single set of processes. For example, both WIA Title I and Perkins III require that the business community be involved in the development of the State Plans for these programs. The State may satisfy both of these requirements by involving the business community in the development of a Unified Plan that includes the two programs. Separate consultations are not necessary.

2. Describe the process used by the State to provide an opportunity for public comment and participation for each of the programs covered in the Unified Plan.

In addition, if your Unified Plan includes:

(a) *Perkins III*, the eligible agency must hold public hearings and include a summary of the recommendations made by all segments of the public and interested organizations and groups and the eligible agency's response to the recommendations in the State Plan. (§ 122(a)(3).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, describe the process used by the State, consistent with section 111(g) of WIA, to provide an opportunity for public comment, including comments by representatives of business and representatives of labor organizations, and input into development of the Plan, prior to submission of the Plan.

(c) *Adult Education and Family Literacy*, describe the process that will be used for public participation and comment with respect to the AEFLA portion of the Unified Plan. (§ 224(b)(9).)

(d) *TANF*, the State shall make available to the public a summary of any Plan or Plan amendment submitted by the State under this section. With respect to the TANF plan design, local governments and private sector organizations have been consulted regarding the plan and design of welfare services in the State so that the services are provided in a manner appropriate to local populations; and have had at least 45 days to submit comments on the plan and the design of such services. (§ 402(c).)

(e) *CSBG*, provide evidence that the public participation requirements were met, including documents which confirms that a legislative public hearing on the State Plan was conducted as required by subsection 675(b) and that the Plan was also made available for public inspection and review as required by 675(d)(2).

3. This section should describe the types of activities and outcomes that were conducted to meet the consultation requirement. Demonstrate, as appropriate, how comments were considered in the plan development process including specific information on how the various WIA agency and program partners were involved in developing the unified State Plan.

The following agencies, groups or individuals must be consulted, if your Unified Plan includes:

(a) *Perkins III: (§ 122(a)(3),(b)(1), (c)(3), (e)(3).)*

- Parents.
- Teachers.
- Students.
- Eligible Recipients.
- Representatives of special populations in the State.
- Representatives of business and industry in the State, including small- and medium-sized local businesses.
- Representatives of labor organizations in the State.
- Interested community members.
- Governor of the State.

In addition, the eligible agency must consult with the State agency responsible for secondary education and the State agency responsible for supervision of community colleges, technical institutes, or other 2-year post secondary institutions primarily engaged in providing postsecondary vocational and technical education concerning the amount and uses of funds proposed to be reserved for adult vocational and technical education, postsecondary vocational and technical education, tech-prep education, and secondary vocational technical education. Include any objections filed by either agency and your response(s). (§ 122(e)(3).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs: (§§ 112(b)(1) and 112(b)(9).)*

• The Governor of the State and State Board.

- Local Chief elected officials.
- Business community.
- Labor organizations.
- The following agencies, groups and individuals should also be consulted: Local Boards and Youth Councils, Educators, Vocational Rehabilitation Agencies, Service providers, Welfare agencies, Faith-based and Community organizations and the State Employment Security Agency.

In addition, describe the role of the State Board and Local Boards in planning and coordination in the Unified Plan (§ 501(c)(3).)

Note: While WIA only requires the involvement of State Board and Local Boards

in the planning and coordination of the programs and activities authorized under title I, the intent of the Unified Plan approach is to enable all the relevant parties in an area, if they so choose, to come together more readily to coordinate their activities in the best interests of the population to be served. However coordination is achieved, nothing in the Unified Plan or in WIA itself permits a Board or any other entity to alter the decisions made by another program grantee in accord with that grantee's statutes.

(c) *Adult Education and Family Literacy:*

• Governor of the State (any comments made by the Governor must be included in the Plan) (§ 224(d).)

(d) *Vocational Rehabilitation:*

• State Rehabilitation Council (include the response of the designated State unit to such input and recommendations).

(§ 101(a)(21)(A)(ii)(III).)

(e) *CSBG:*

- Low-income individuals.
- Community organizations.
- Religious organizations.
- Representatives of low-income individuals.

(f) *TANF:*

• With respect to the TANF plan design, local governments and private sector organizations have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and have had at least 45 days to submit comments on the plan and the design of such services.

D. Needs Assessment

1. Describe the educational and job-training needs of individuals in the overall State population and of relevant subgroups of all the programs included in the Unified Plan.

Many of the programs that may be included in a Unified Plan require a needs assessment. State agencies should fulfill these assessment responsibilities collaboratively or, at a minimum, create a planning process that promotes the sharing of needs assessment information among all agencies involved in preparing the Unified Plan. Sharing of assessment data can create a framework for the coordinated and integrated services that are to be provided through the One-Stop delivery system. The State may organize the presentation of assessment data in its Unified Plan in a manner it deems most appropriate and useful for planning, such as on a program-by-program basis, by geographic region, or by special population.

In answering the above question, if your Unified Plan includes:

(a) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, identify the types and availability of workforce investment activities currently in the State. (§ 112(b)(4)(A–D).)

(b) *Adult Education and Family Literacy*, objectively assess the adult education and literacy needs of individuals, including an assessment of those most in need and hardest to serve, including low income students, individuals with disabilities, single parents, displaced homemakers, and individuals with multiple barriers to educational enhancement (including individuals with limited English proficiency, criminal offenders in correctional institutions and other institutionalized individuals.) (§§ 224(b)(10) and 225.)

(c) *Food Stamp Employment and Training (E&T)*, provide an answer and explain the method used to:

(i) Estimate the number and characteristics of the expected pool of work registrants during the fiscal year;

(ii) Estimate the number of work registrants the State agency intends to exempt from E&T, along with a discussion of the proposed exemption criteria;

(iii) Estimate the number of placements into E&T components during the fiscal year;

(iv) Estimate the number of ABAWDs (able-bodied adults without dependents) in the State during the fiscal year;

(v) Estimate the number of ABAWDs in both waived and unwaived area of the State during the fiscal year;

(vi) Estimate the average monthly number of ABAWDs included in the State's 15 percent exemption allowance, along with a discussion of how the State intends to apply the exemption;

(vii) Estimate the number of qualifying education/training and workfare opportunities for ABAWDs the State will create during the fiscal year.

(d) *Vocational Rehabilitation:*

(i) Assess the needs of individuals with disabilities in the State, particularly the vocational rehabilitation needs of individuals with the most significant disabilities (including their need for supported employment services), individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program, and individuals with disabilities served through other components of the statewide workforce investment system. (§§ 101(a)(15)(A)(i)(I–III) and 625(b)(2).)

(ii) Include State estimates of the number of individuals in the State who are eligible for services under title I of the Rehabilitation Act, the number of such individuals who will receive

services provided with funds provided under part B of title I and under part B of title VI (including, if the designated State agency uses an order of selection, estimates of the number of individuals to be served under each priority category within the order), and the costs of the services provided (including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.) (§ 101(a)(15)(B).)

(iii) Provide an assessment of the need to establish, develop, or improve community rehabilitation programs within the State. (§ 101(a)(15)(A)(ii).)

(e) *HUD Employment and Training Programs*: (Reminder: the following is a suggestion for incorporating HUD programs into your State's Unified Plan. However, following this guidance will not trigger funding for HUD programs):

(i) Address the educational and training needs of public housing residents and other families receiving housing assistance.

2. WIA Title I and Wagner Peyser Act: Economic and Labor Market Analysis (§ 112(b)(4).): As a foundation for this strategic plan and to inform the strategic investments and strategies that flow from this Plan, provide a detailed analysis of the State's economy, the labor pool, and the labor market context. Elements of the analysis should include the following:

a. What is the current makeup of the State's economic base by industry?

b. What industries and occupations are projected to grow and/or decline in the short term and over the next decade?

c. In what industries and occupations is there a demand for skilled workers and available jobs, both today and projected over the next decade? In what numbers?

d. What jobs/occupations are most critical to the State's economy?

e. What are the skill needs for the available, critical and projected jobs?

f. What is the current and projected demographics of the available labor pool (including the incumbent workforce) both now and over the next decade?

g. Is the State experiencing any "in migration" or "out migration" of workers that impact the labor pool?

h. Based on an analysis of both the projected demand for skills and the available and projected labor pool, what skill gaps is the State experiencing today and what skill gaps are projected over the next decade?

i. Based on an analysis of the economy and the labor market, what workforce development issues has the State identified?

j. What workforce development issues has the State prioritized as being most

critical to its economic health and growth?

E. State and Local Governance

1. What is the organization, structure and role/function of each State and local entity that will govern the activities of the Unified Plan?

In answering the above question, if your Unified Plan includes:

(a) *Perkins III*, describe the procedures in place to develop the memoranda of understanding outlined in Section 121(c) of the Workforce Investment Act of 1998 concerning the provision of services only for postsecondary students and school dropouts. (§ 122(c)(21).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) Organization of State agencies in relation to the Governor:

1. Provide an organizational chart that delineates the relationship to the Governor of the agencies involved in the public workforce investment system, including education and economic development and the required and optional One-Stop partner programs managed by each agency.

2. In a narrative describe how the agencies involved in the public workforce investment system interrelate on workforce and economic development issues and the respective lines of authority.

(ii) State Workforce Investment Board:

1. Describe the organization and structure of the State Board. (§ 111.):

2. Include a description of the process by which State and Local Boards were created.

3. Identify the organizations or entities represented on the State Board. If you are using an alternative entity which does not contain all the members required under section 111(b)(1), describe how each of the entities required under this section will be involved in planning and implementing the State's workforce investment system as envisioned in WIA. How is the alternative entity achieving the State's WIA goals? (§§ 111(a-c), 111(e), and 112(b)(1).)

4. Describe the process your State used to identify your State Board members. How did you select Board members, including business representatives, who have optimum policy-making authority and who represent diverse regions of the State as required under WIA? Describe how the Board's membership enables you to achieve your vision described above. (20 CFR 661.200.)

5. Describe how the Board carries out its functions as required in Section 111(d) and 20 CFR 661.205. Include functions the Board has assumed that

are in addition to those required. Identify any functions required in Section 111(d) the Board does not perform and explain why.

6. How will the State Board ensure that the public (including people with disabilities) has access to Board meetings and information regarding State Board activities, including membership and meeting minutes? (20 CFR 661.207.)

7. Identify the circumstances which constitute a conflict of interest for any State or Local Workforce Investment Board member or the entity that s/he represents, and any matter that would provide a financial benefit to that member or his or her immediate family. (§§ 111(f), 112(b)(13), and 117(g).)

8. What resources does the State provide the Board to carry out its functions, *i.e.*, staff, funding, etc.?

(iii) What is the structure/process for the State agencies and State Board to collaborate and communicate with each other and with the local workforce investment system (§ 112(b)(8)(A).):

1. Describe the steps the State will take to improve operational collaboration of the workforce investment activities and other related activities and programs outlined in section 112(b)(8)(A), at both the State and local level (*e.g.*, joint activities, memoranda of understanding, planned mergers, coordinated policies, etc.). How will the State Board and agencies eliminate any existing State-level barriers to coordination? (§§ 111(d)(2) and 112(b)(8)(A).)

2. Describe the lines of communication established by the Governor to ensure open and effective sharing of information among the State agencies responsible for implementing the vision for the workforce system and between the State agencies and the State Workforce Investment Board.

3. Describe the lines of communication and mechanisms established by the Governor to ensure timely and effective sharing of information between the State agencies/ State Board and local workforce investment areas and Local Boards. Include types of regularly issued guidance and how Federal guidance is disseminated to Local Boards and One-Stop Career Centers. (§ 112(b)(1).)

(iv) Describe any cross-cutting organizations or bodies at the State level designed to guide and inform an integrated vision for serving youth in the State within the context of workforce investment, social services, juvenile justice, and education. Describe the membership of such bodies and the functions and responsibilities in establishing priorities and services for

youth? How is the State promoting a collaborative cross-agency approach for both policy development and service delivery at the local level for youth? (§ 112(b)(18)(A).)

(v) Describe major State policies and requirements that have been established to direct and support the development of a Statewide workforce investment system not described elsewhere in this Plan as outlined below. (§ 112(b)(2).)

1. What State policies and systems are in place or planned to support common data collection and reporting processes, information management, integrated service delivery, and performance management? (§§ 111(d)(2) and 112(b)(8)(B).)

2. What State policies are in place that promote efficient use of administrative resources such as requiring more collocation and fewer affiliate sites in local One-Stop systems to eliminate duplicative facility and operational costs or to require a single administrative structure at the local level to support Local Boards and to be the fiscal agent for WIA funds to avoid duplicative administrative costs that could otherwise be used for service delivery and training? Include any specific administrative cost controls, plans, reductions, and targets for reductions, if the State has established them. (§§ 111(d)(2) and 112(b)(8)(A).)

3. What State policies are in place to promote universal access and consistency of service Statewide? (§ 112(b)(2).)

4. What policies support a demand-driven approach, as described in Part I. "Demand-driven Workforce Investment System," to workforce development—such as training on the economy and labor market data for Local Board and One-Stop Career Center staff? (§§ 112(b)(4) and 112(b)(17)(A)(iv).)

5. What policies are in place to ensure that the resources available through the Federal and/or State apprenticeship programs, the Job Corps and the Senior Community Service Employment Program are fully integrated with the State's One-Stop delivery system? (§§ 112(b)(17)(A)(iv) and (b)(18)(C).)

(vi) Local Area Designations—Identify the State's designated local workforce investment areas and the date of the most recent area designation, including whether the State is currently re-designating local areas pursuant to the end of the subsequent designation period for areas designated in the previous Unified Plan. (§§ 112(b)(5).) Include a description of the process used to designate such areas. Describe how the State considered the extent to which such local areas are consistent with labor market areas: geographic

areas served by local and intermediate education agencies, post-secondary education institutions and area vocational schools; and all other criteria identified in section 116(a)(1) in establishing area boundaries, to assure coordinated planning. Describe the State Board's role, including all recommendations made on local designation requests pursuant to § 116(a)(4). (§§ 112(b)(5) and 116(a)(1).) Describe the appeals process used by the State to hear appeals of local area designations referred to in § 116(a)(5) and 112(b)(15).

(vii) Local Workforce Investment Boards—Identify the criteria the State has established to be used by the chief elected official(s) in the local areas for the appointment of Local Board members based on the requirements of section 117. (§§ 112(b)(6), 117(b).)

(viii) Identify the circumstances which constitute a conflict of interest for any State or Local Workforce Investment Board member or the entity that s/he represents, and any matter that would provide a financial benefit to that member or his or her immediate family. (§§ 111(f), 112(b)(13), and 117(g).)

(ix) Identify the policies and procedures to be applied by local areas for determining eligibility of local level training providers, how performance information will be used to determine continuing eligibility and the agency responsible for carrying out these activities. Describe how the State solicited recommendations from Local Boards and training providers and interested members of the public, including representatives of business and labor organizations, in the development of these policies and procedures.

(x) Individual Training Accounts (ITAs):

1. What policy direction has the State provided for ITAs?

2. Describe innovative training strategies used by the State to fill skills gaps. Include in the discussion the State's effort to broaden the scope and reach of ITAs through partnerships with business, education, economic development, and industry associations and how business and industry involvement is used to drive this strategy.

3. Discuss the State's plan for committing all or part of WIA Title I funds to training opportunities in high-growth, high-demand, and economically vital occupations.

4. Describe the State's policy for limiting ITAs (e.g., dollar amount or duration).

5. Describe the State's current or planned use of WIA Title I funds for the

provision of training through apprenticeship.

6. Identify State policies developed in response to changes to WIA regulations that permit the use of WIA Title I financial assistance to employ or train participants in religious activities when the assistance is provided indirectly) such as through an ITA. (Note that the Department of Labor provides Web access to the equal treatment regulations and other guidance for the workforce investment system and faith-based and community organizations at <http://www.dol.gov/cfbci/legalguidance.htm>).

(xi) Identify the criteria to be used by Local Boards in awarding grants for youth activities, including criteria that the Governor and Local Boards will use to identify effective and ineffective youth activities and providers of such activities. (§ 112(b)(18)(B).)

(xii) Describe the competitive and non-competitive processes that will be used at the State level to award grants and contracts for activities under title I of WIA, including how potential bidders are being made aware of the availability of grants and contracts. (§ 112(b)(16).)

(c) Vocational Rehabilitation, designate a State agency as the sole State agency to administer the Plan, or to supervise the administration of the Plan by a local agency, in accordance with section 101(a)(2)(A). (§ 101(a)(2)(A).)

(d) TANF, describe the objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. (§ 402(a)(1)(B)(iii).)

F. Funding

1. What criteria will the State use, subject to each program's authorizing law, to allocate funds for each of the programs included in the Unified Plan? Describe how the State will use funds the State receives to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, and to expand the participation of business, employees, and individuals in the Statewide workforce investment system. (WIA § 112(b)(10).) In answering the above question, if your Unified Plan includes:

(a) Perkins III:

(i) Describe the criteria that you will use in approving applications by eligible recipients for funds under Perkins III. (§ 122(c)(1)(B).)

(ii) Describe how funds received through the allotment made under

section 111 will be allocated among secondary school vocational and technical education, or postsecondary and adult vocational and technical education, or both, including the rationale for such allocation. (§ 122(c)(4)(A).)

(iii) Describe how funds received through the allotment made under section 111 will be allocated among consortia which will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia, including the rationale for such allocation. (§ 122(c)(4)(B).)

(iv) If the eligible agency decides to develop an alternative allocation formula under the authority of sections 131(c) and/or 132(b), submit the proposed formula and supporting documentation to the Secretary of Education for approval prior to the submission of your State Plan or as a part of the State Unified Plan. (§§ 131(c) and 132(b).)

(b) *Tech-Prep*, describe how the eligible agency will award tech-prep funds in accordance with the requirements of Sections 204(a) and Section 205 of Perkins III, including whether grants will be awarded on a competitive basis or on the basis of a formula determined by the State.

(c) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs* (§ 112(b)(12):

(i) If applicable, describe the methods and factors (including weights assigned to each factor) your State will use to distribute funds to local areas for the 30% discretionary formula adult employment and training funds and youth funds pursuant to Sections 128(b)(3)(B) and 133(b)(3)(B).

(ii) Describe how the allocation methods and factors help ensure that funds are distributed equitably throughout the State and that there will be no significant shifts in funding levels to a local area on a year-to-year basis.

(iii) Describe the State's allocation formula for dislocated worker funds under 133(b)(2)(B).

(iv) Describe how the individuals and entities on the State Board were involved in the development of the methods and factors, and how the State consulted with chief elected officials in local areas throughout the State in determining such distribution.

(v) Describe the procedures and criteria that are in place under 20 CFR 663.600 for the Governor and appropriate Local Boards to direct One-Stop operators to give priority of service to public assistance recipients and other low-income individuals for intensive and training services if funds allocated to a local area for adult employment and

training activities are determined to be limited. (§§ 112(b)(17)(A)(iv) and 134(d)(4)(E).)

(vi) Specify how the State will use the 10 percent Wagner-Peyser Act funds allotted to it under section 7(b) in accordance with the three provisions of allowable activities: performance incentives; services for groups with special needs; and extra costs of exemplary service delivery models. (§ 112(b)(7) and 20 CFR 652.204.)

(d) *Adult Education and Family Literacy*:

(i) Describe how the eligible agency will fund local activities in accordance with the considerations described in Section 231(e) and the other requirements of title II of WIA. (§ 224(b).)

(ii) Describe the process to show that public notice was given of the availability of Federal funds to eligible recipients and the procedures for submitting applications to the State, including approximate time frames for the notice and receipt of applications. (§ 231(c).)

(iii) Describe how the eligible agency will use funds made available under Section 222(a)(2) for State leadership activities. (§ 223(a).)

(iv) Describe the steps the eligible agency will take to ensure direct and equitable access, as required in section 231(c). (§ 224(b)(12).)

(e) *Food Stamp Employment and Training*, Estimate the total cost of the State's E&T program and identify the source of funds according to the format for Table 5, Planned Fiscal Year Costs, contained in the most current release of "The Handbook on Preparing State Plans for Food Stamp Employment and Training Programs."

(f) *TANF*, indicate the name, address, and EIN number of the TANF administering agency and estimate for each quarter of the fiscal year by percentage the amount of TANF grant that it wishes to receive.

(g) *Vocational Rehabilitation*:

(i) Describe how the State will utilize funds reserved for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under the State Plan, particularly individuals with the most significant disabilities. (§ 101(a)(18)(B).)

(ii) Describe the quality, scope, and extent of supported employment services authorized under the Act to be provided to individuals who are eligible under the Act to receive the services. (§ 625(b)(3).)

(iii) In the event that vocational rehabilitation services cannot be

provided to all eligible individuals with disabilities in the State who apply for services, indicate the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services and provide the justification for the order. (§ 101(a)(5)(A)-(B).)

(h) *CSBG*, describe how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in Section 675C(b), including a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives.

G. *Activities To Be Funded*

1. For each of the programs in your Unified Plan, provide a general description of the activities the State will pursue using the relevant funding.

In answering the above question, if your Unified Plan includes:

(a) *Perkins III*:

(i) Describe the vocational and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance. (§ 122(c)(1).)

(ii) Describe the secondary and postsecondary vocational and technical education programs to be carried out, including programs that will be carried out by the eligible agency to develop, improve, and expand access to quality, state-of-the-art technology in vocational and technical education programs. (§ 122(c)(1)(A).)

(iii) Describe how funds will be used to improve or develop new vocational and technical education courses and effectively link secondary and postsecondary education. (§ 122(c)(1)(D) and 122(c)(19).)

(iv) Describe how the eligible agency will improve the academic and technical skills of students participating in vocational and technical education programs, including strengthening the academic, and vocational and technical, components of vocational and technical education programs through the integration of academics with vocational and technical education to (1) Ensure learning in the core academic, vocational and technical subjects; (2) provide students with strong experience in, and understanding of, all aspects of an industry; and (3) prepare students for opportunities in post-secondary education or entry into high skill and high wage jobs in current and emerging occupations. (§ 122(c)(1)(C) and (5)(A).)

(v) Describe how the eligible agency will ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic

proficiencies as are taught to all other students. (§ 122(c)(5)(B).)

(vi) Describe how the eligible agency will actively involve parents, teachers, local businesses (including small- and medium-sized businesses), and labor organizations in the planning, development, implementation and evaluation of vocational and technical education programs.

(b) *Tech-Prep*, describe how funds will be used in accordance with the requirements of section 204(c).

(c) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) Service Delivery—Describe the approaches the State will use to provide direction and support to Local Boards and the One-Stop Career Center delivery system on the strategic priorities to guide investments, structure business engagement, and inform service delivery approaches for all customers. (§ 112(b)(17)(A).)

1. One-Stop Service Delivery Strategies: (§ 111(d)(2) and 112(b)(2).)

a. How will the services provided by each of the required and optional One-Stop partners be coordinated and made available through the One-Stop system? (§ 112(b)(8)(A).)

b. How are youth formula programs funded under § 128(b)(2)(A) integrated in the One-Stop system?

c. What minimum service delivery requirements does the State mandate in a comprehensive One-Stop Centers or an affiliate site?

d. What tools and products has the State developed to support service delivery in all One-Stop Centers Statewide?

e. What models/templates/approaches does the State recommend and/or mandate for service delivery in the One-Stop Centers? For example, do all One-Stop Centers have a uniform method of organizing their service delivery to business customers? Is there a common individual assessment process utilized in every One-Stop Center? Are all One-Stop Centers required to have a resource center that is open to anyone?

2. Workforce Information—A fundamental component of a demand-driven workforce investment system is the integration and application of the best available State and local workforce information including, but not limited to, economic data, labor market information, census data, private sources of workforce information produced by trade associations and others, educational data, job vacancy surveys, transactional data from job boards, and information obtained directly from businesses. (§§ 111(d)(8), 112(b)(1), and 134(d)(2)(E).)

a. Describe how the State will integrate workforce information into its planning and decision-making at the State and local level, including State and Local Boards, One-Stop operations, and case manager guidance.

b. Describe the approach the State will use to disseminate accurate and timely workforce information to businesses, job seekers, and employment counselors, in easy to use formats that are readily accessible within One-Stop Career Centers and at remote locations such as libraries, schools, worksites, and at home.

c. Describe how the State's Workforce Information Core Products and Services Plan is aligned with the WIA State Plan to ensure that the investments in core products and services support the State's overall strategic direction for workforce investment.

d. Describe how State workforce information products and tools are coordinated with the national electronic workforce information tools including America's Career Information Network and Career Voyages.

3. Adults and Dislocated Workers

a. Core Services. (§ 112(b)(17)(a)(i).)

(i) Describe State strategies and policies to ensure adults and dislocated workers have universal access to the minimum required core services as described in § 134(d)(2).

(ii) Describe how the State will ensure the three-tiered service delivery strategy for labor exchange services for job seekers and employers authorized by the Wagner-Peyser Act includes (1) self-service, (2) facilitated self-help service, and (3) staff-assisted service, and is accessible and available to all customers at the local level.

(iii) Describe how the State will integrate resources provided under the Wagner-Peyser Act and WIA title I for adults and dislocated workers as well as resources provided by required One-Stop partner programs, to deliver core services.

b. Intensive Services. Describe State strategies and policies to ensure adults and dislocated workers who meet the criteria in § 134(d)(3)(A) receive intensive services as defined.

c. Training Services. Describe the Governor's vision for increasing training access and opportunities for individuals including the investment of WIA title I funds and the leveraging of other funds and resources.

d. Eligible Training Provider List. Describe the State's process for providing broad customer access to the statewide list of eligible training providers and their performance information including at every One-Stop Career Center. (§ 112(b)(17)(A)(iii).)

e. On-the-Job (OJT) and Customized Training (§ 112(b)(17)(A)(i) and 134(b).) Based on the outline below, describe the State's major directions, policies and requirements related to OJT and customized training.

(i) Describe the Governor's vision for increasing training opportunities to individuals through the specific delivery vehicles of OJT and customized training.

(ii) Describe how the State:

(a.) Identifies OJT and customized training opportunities;

(b.) Markets OJT and customized training as incentives to untapped employer pools including new business to the State and employer groups;

(c.) Partners with high-growth, high-demand industries and economically vital industries to develop potential OJT and customized training strategies;

(d.) Taps business partners to help drive the strategy through joint planning, competency and curriculum development; and determining appropriate lengths of training, and

(e.) Leverages other resources through education, economic development and industry associations to support OJT and customized training ventures.

f. What policies and strategies does the State have in place to ensure that, pursuant to the Jobs for Veterans Act (Pub. L. 107-288)(38 U.S.C. 4215), that priority of service is provided to veterans and certain spouses who otherwise meet the eligibility requirements for all employment and training programs funded by the U.S. Department of Labor, in accordance with the provisions of TEGL 5-03 (9/16/03)?

g. Rapid Response. Describe how your State provides Rapid Response services with the funds reserved under Section 133(a)(2).

(i) Identify the entity responsible for providing Rapid Response services. Describe how Rapid Response activities involve Local Boards and Chief Elected Officials. If Rapid Response activities are shared between the State and local areas, describe the functions of each and how funds are allocated to the local areas.

(ii) Describe the process involved in carrying out Rapid Response activities.

(a.) What methods are involved in receiving notice of impending layoffs (include WARN Act notice as well as other sources)?

(b.) What efforts does the Rapid Response team make to ensure that rapid response services are provided, whenever possible, prior to layoff date, onsite at the company, and on company time?

(c.) What services are included in Rapid Response activities? Does the Rapid Response team provide workshops or other activities in addition to general informational services to affected workers? How do you determine what services will be provided for a particular layoff (including layoffs that may be trade-affected)?

(d.) How does the State ensure a seamless transition between Rapid Response services and One-Stop activities for affected workers?

(e.) Describe how Rapid Response functions as a business service? Include whether Rapid Response partners with economic development agencies to connect employees from companies undergoing layoffs to similar companies that are growing and need skilled workers? How does Rapid Response promote the full range of services available to help companies in all stages of the economic cycle, not just those available during layoffs? How does the State promote Rapid Response as a positive, proactive, business-friendly service, not only a negative, reactive service?

(f.) What other partnerships does Rapid Response engage in to expand the range and quality of services available to companies and affected workers and to develop an effective early layoff warning network?

(g.) What systems does the Rapid Response team use to track its activities? Does the State have a comprehensive, integrated Management Information System that includes Rapid Response, Trade Act programs, National Emergency Grants, and One-Stop activities?

(h.) Are Rapid Response funds used for other activities not described above; e.g., the provision of additional assistance to local areas that experience increased workers or unemployed individuals due to dislocation events?

4. Veterans Programs. For the grant period FY 2005—FY 2009, States submitted a five year strategic plans to operate the Local Veterans' Employment Representative (LVER) and Disabled Veterans' Outreach Programs (DVOP) Specialist programs under the Jobs for Veterans Act. These plans may be incorporated by reference as part of a state's Unified Plan. Modifications to these five year Jobs for Veterans Act plans will be managed in accordance with policy guidance from the Veterans' Employment and Training Service.

5. Youth. ETA's strategic vision identifies youth most in need, such as out of school youth and those at risk, youth in foster care, youth aging out of foster care, youth offenders, children of

incarcerated parents, homeless youth, and migrant and seasonal farmworker youth as those most in need of service.

State programs and services should take a comprehensive approach to serving these youth, including basic skills remediation, helping youth stay in or return to school, employment, internships, help with attaining a high school diploma or GED, post-secondary vocational training, apprenticeships and enrollment in community and four-year colleges. (§ 112(b)(18).)

a. Describe your State's strategy for providing comprehensive, integrated services to eligible youth, including those most in need as described above. Include any State requirements and activities to assist youth who have special needs or barriers to employment, including those who are pregnant, parenting, or have disabilities. Include how the State will coordinate across State agencies responsible for workforce investment, foster care, education, human services, juvenile justice, and other relevant resources as part of the strategy. (§ 112(b)(18).)

b. Describe how coordination with Job Corps and other youth programs will occur. (§ 112(b)(18)(C).)

c. How does the State Plan to utilize the funds reserved for Statewide activities to support the State's vision for serving youth? Examples of activities that would be appropriate investments of these funds include:

(i) utilizing the funds to promote cross agency collaboration;

(ii) demonstration of cross-cutting models of service delivery;

(iii) development of new models of alternative education leading to employment; or

(iv) development of demand-driven models with business and industry working collaboratively with the workforce investment system and education partners to develop strategies for bringing these youth successful into the workforce pipeline with the right skills.

d. Describe in general, how your State will meet the Act's provisions regarding youth program design. (§§ 112(b)(18) and 129(c).)

6. Business Services.

a. Describe how the needs of employers will be determined in the local areas and on a statewide basis.

b. Describe how integrated business services, including Wagner-Peyser Act services, will be delivered to employers through the One-Stop system.

c. How will the system streamline administration of Federal tax credit programs within the One-Stop system to maximize employer participation (20 CFR 652.3(b), § 112(b)(17)(A)(i).)

7. Innovative Service Delivery Strategies. (§ 112(b)(17)(A).)

a. Describe innovative service delivery strategies the State has or is planning to undertake to maximize resources, increase service levels, improve service quality, achieve better integration or meet other key State goals. Include in the description the initiative's general design, anticipated outcomes, partners involved and funds leveraged (e.g., title I formula, Statewide reserve, employer contributions, education funds, non-WIA State funds).

b. If your State is participating in the ETA Personal Re-employment Account (PRA) demonstration, describe your vision for integrating PRAs as a service delivery alternative as part of the State's overall strategy for workforce investment.

8. Strategies for Faith-based and Community Organizations (§ 112(b)(17)(i).) Describe those activities to be undertaken to: (1) increase the opportunities for participation of faith-based and community organizations as committed and active partners in the One-Stop delivery system; and (2) expand the access of faith-based and community organizations' clients and customers to the services offered by the One-Stops in the State. Outline those action steps designed to strengthen State collaboration efforts with local workforce investment areas in conducting outreach campaigns to educate faith-based and community organizations about the attributes and objectives of the demand-driven workforce investment system. Indicate how these resources can be strategically and effectively leveraged in the State's workforce investment areas to help meet the objectives of the Workforce Investment Act.

(d) *Adult Education and Literacy Services, including workplace literacy services:*

(i) Family literacy services.

(ii) English literacy programs.

(e) Food Stamp Employment and Training:

(i) Describe the components of the State's E&T program.

(ii) Discuss the weekly/monthly hours of participation required of each program component.

(iii) Describe planned combinations of components to meet the statutory requirement of 20 hours of participation per week to qualify as a work program for ABAWDS.

(f) *TANF*, outline how the State intends to:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform

manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(§ 402(a)(1)(A)(i).)

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive,) whichever is earlier, consistent with section 407(e)(2).

(§ 402(a)(1)(A)(ii).)

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407. (§ 402(a)(1)(A)(iii).)

(iv) Take such reasonable steps as deemed necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal government. (§ 402(a)(1)(A)(iv).)

(v) Describe the financial eligibility criteria and corresponding benefits and services covered with State Maintenance of Effort (MOE) funds. This description applies to State MOE funds that are used in the State's TANF program or used to fund a separate State program.

(g) *SCSEP*, provide a description of each project function or activity and how the State will implement the project. The following activities should be discussed separately: (title V of the Older Americans Act)

(i) Describe how the services proposed support the State Senior Employment Services Coordination Plan.

(ii) Describe how recruitment and selection of participants will be achieved under TEGL 13-04 and the regulations at 20 CFR 641.500 and 641.525. Include a description of the new recruitment strategies that will be used to reach the target population.

(iii) Describe how participant income will be recertified each year, including where eligibility records will be maintained.

(iv) Describe the arrangements that will be made to offer physical examinations as a required fringe benefit.

(v) Describe the orientation procedures for participants and host agencies.

(vi) Describe the procedures for assessing job aptitudes, job readiness, and job preferences of participants and

their potential for transition into unsubsidized employment.

(vii) Describe how the assessment will be used to develop the participant's Individual Employment Plan (IEP).

(viii) Describe how the participant will be assigned to community service including: The types of community service activity that will be emphasized and how they were chosen; methods used to match participants with community service training; the extent to which participants will be placed in the administration of the project itself; the types of host agencies used and the procedures and criteria for selecting the assignments; the average number of hours in a participant's training week; the average wage paid during training; the fringe benefits offered (if any); procedures for ensuring adequate supervision.

(ix) Describe the training that will be provided during community service training and any other types of training provided, including linkages with local One-Stop Career Centers, the Registered Apprenticeship Program, and the Disability Program Navigators.

(x) Describe the supportive services that will be offered to help participants obtain and retain an unsubsidized job.

(xi) Describe arrangements that will be made to provide transportation assistance to participants.

(xii) Describe the steps that will be taken to move or place participants into unsubsidized employment, including cooperative measures that will be taken with the One-Stop Delivery System, and that support the Administration's focus on high-growth industries. Any grantee that failed to meet at least 20 percent unsubsidized placements in program year 2004 must submit a corrective action plan.

(xiii) Describe any policy for maximum duration of enrollment or maximum time in community service.

(xiv) Describe procedures for terminating a participant, including Individual Employment Plan terminations and the grievance procedures that will address termination from the program.

(xv) Describe the procedures for addressing and resolving participant complaints.

(xvi) Describe procedures for over enrolling participants, including how over enrollments will be balanced with Equitable Distribution requirements.

(xvii) Describe steps that will be taken to ensure compliance with the Maintenance of Effort provision of section 501(b)(1)(F).

(xviii) Describe payroll procedures and how workers' compensation premiums are paid.

(xix) Describe collaboration efforts with the One-Stop System and with other partner programs under the Workforce Investment Act to maximize opportunities for SCSEP participants.

(xx) Describe efforts to work with local economic development offices in rural locations.

(xxi) Describe current slot imbalances and proposed steps to correct inequities to achieve equitable distribution.

(xxii) List the cities and counties where the project and subprojects will be conducted. Include the number of SCSEP authorized positions and indicate where the positions changed from the prior year.

(xxiii) Describe the organizational structure of the project and how subprojects will be managed, including assurances that adequate resources for administrative costs will be provided. Also describe the training that will be provided to local staff and describe how projects will be monitored for program and financial compliance, including audit plans.

(xxiv) Describe how the State will manage its providers and how it will transfer participants if new providers are selected to serve in the State.

(xxv) Include a proposed level for each performance measure for each of the program years covered by the Plan. While the Plan is under review or through a subsequent modification, the State will negotiate with the Division of Older Worker Programs to set the appropriate levels for the next two years. At a minimum, States must identify the performance indicators required under 20 CFR 641.710, and, for each indicator, the State must develop an objective and quantifiable performance goal for two program years. The performance measures include: placement rate; service level; service to most in need; community service; employment retention; customer satisfaction of employers, participants, and host agencies; and earning increase. The requirements for reporting are outlined in Older Worker Bulletin 04-06 dated September 7, 2004.

(xxvi) Describe any request for an increase in administrative costs consistent with section 502(c)(3) of the Older Americans Act.

(xxvii) Describe plans to provide a copy of this section to Area Agencies on Aging consistent with section 502(d) of the Older American Act.

(h) *CSBG*, explain how the activities funded will:

(i) Remove obstacles and solve problems that block the achievement of self-sufficiency, including those families and individuals who are attempting to transition off a State program carried out

under part A of title IV of the Social Security Act.

(ii) Secure and retain meaningful employment.

(iii) Attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives.

(iv) Make better use of available income.

(v) Obtain and maintain adequate housing and a suitable living environment.

(vi) Obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs.

(vii) Achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundation, and other public and private partners.

(viii) Create youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime.

(ix) Provide supplies, services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals.

H. Coordination and Non-Duplication

1. Describe how your State will coordinate and integrate the services provided through all of the programs identified in the Unified Plan in order to meet the needs of its customers, ensure there is no overlap or duplication among the programs, and ensure collaboration with key partners and continuous improvement of the workforce investment system. (States are encouraged to address several coordination requirements in a single narrative, if possible.)

In answering the above question, if your Unified Plan includes:

(a) *Perkins III*, describe coordination with the following agencies or programs:

(i) Programs listed in Section 112(b)(8)(A) of the Workforce Investment Act of 1998 (§ 122(c)(21)) concerning the provision of services for

postsecondary students and school dropouts.

(ii) Other Federal education programs, including any methods proposed for joint planning and coordination.

(§ 122(c)(16).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs:*

(i) Structure/Process for State agencies and State Board to collaborate and communicate with each other and with the local workforce investment system (§ 112(b)(8)(A).)

(a.) Describe the steps the State will take to improve operational collaboration of the workforce investment activities and other related activities and programs outlined in Section 112(b)(8)(A), at both the State and local level (e.g., joint activities, memoranda of understanding, planned mergers, coordinated policies, etc.). How will the State Board and agencies eliminate any existing State-level barriers to coordination? (§§ 111(d)(2) and 112(b)(8)(A).)

(b.) Describe the lines of communication and mechanisms established by the Governor to ensure timely and effective sharing of information between the State agencies/State Board and local workforce investment areas and Local Boards. Include types of regularly issued guidance and how Federal guidance is disseminated to Local Boards and One-Stop Career Centers. (§ 112(b)(1).)

(c.) Describe any cross-cutting organizations or bodies at the State level designed to guide and inform an integrated vision for serving youth in the State within the context of workforce investment, social services, juvenile justice, and education.— Describe the membership of such bodies and the functions and responsibilities in establishing priorities and services for youth? How is the State promoting a collaborative cross-agency approach for both policy development and service delivery at the local level for youth? (§ 112(b)(18)(A).)

(c) *Adult Education and Family Literacy*, describe how the Adult Education and Family Literacy activities that will be carried out with any funds received under AEFLA will be integrated with other adult education, career development, and employment and training activities in the State or outlying area served by the eligible agency. (§ 224(b)(11).)

(d) *Vocational Rehabilitation:*

(i) Describe the State agency's plans policies, and procedures for coordination with the following agencies or programs:

(a.) Federal, State and local agencies and programs, including programs

carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system. (§ 101(a)(11)(C).)

(b.) Education officials responsible for the public education of students with disabilities, including a formal interagency agreement with the State educational agency. (§ 101(a)(11)(D).)

(c.) Private, non-profit vocational rehabilitation service providers through the establishment of cooperative agreements. (§ 101(a)(24)(B).)

(d.) Other State agencies and appropriate entities to assist in the provision of supported employment services. (§ 625(b)(4).)

(e.) Other public or nonprofit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services. (§ 625(b)(5).)

(e) *Unemployment Insurance*, summarize requests for any Federal partner assistance (primarily non-financial) that would help the SWA attain its goal.

(f) *CSBG*, describe how the State and eligible entities will coordinate programs to serve low-income residents with other organizations, including:

(i) Religious organizations.

(ii) Charitable groups.

(iii) Community organizations.

I. Special Populations and Other Groups

1. Describe how your State will develop program strategies, to target and serve special populations. States may present information about their service strategies for those special populations that are identified by multiple Federal programs as they deem most appropriate and useful for planning purposes, including by special population or on a program by program basis. In providing this description, if your Unified Plan includes any of the programs listed below, please address the following specific relevant populations:

(a) *Perkins III:*

(i) Each category of special populations defined in Section 3(23) of the Act. (§ 122(c)(7).)

(ii) Students in alternative education programs, if appropriate. (§ 122(c)(13).)

(iii) Individuals in State correctional institutions. (§ 122(c)(18).)

(i) Describe how funds will be used to promote preparation for nontraditional training and employment. (§ 122(c)(17).)

(ii) Describe how individuals who are members of special populations will be provided with equal access to activities assisted under Title I of Perkins III and

will not be discriminated against on the basis of their status as members of special populations. (§ 122(c)(8)(B).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*

(§ 112(b)(17)(A)(iv) and 112(b)(17)(B).):

(i) Service to Specific Populations.

(§ 112(b)(17)(A)(iv).)

(a.) Describe the State's strategies to ensure that the full range of employment and training programs and services delivered through the State's One-Stop delivery system are accessible to and will meet the needs of dislocated workers, displaced homemakers, low-income individuals such as migrants and seasonal farmworkers, women, minorities, individuals training for non-traditional employment, veterans, public assistance recipients and individuals with multiple barriers to employment (including older individuals, people with limited English-speaking proficiency, and people with disabilities.)

(§ 112(b)(17)(iv).)

(b.) Describe the reemployment services you will provide to unemployment insurance claimants and the Worker Profiling services provided to claimants identified as most likely to exhaust their unemployment insurance benefits in accordance with section 3(c)(3) of the Wagner-Peyser Act.

(c.) Describe how the State administers the unemployment insurance work test and how feedback requirements (under § 7(a)(3)(F) of the Wagner-Peyser Act) for all UI claimants are met.

(d.) Describe the State's strategy for integrating and aligning services to dislocated workers provided through the WIA rapid response, WIA dislocated worker, and Trade Adjustment Assistance (TAA) programs. Does the State have a policy supporting co-enrollment for WIA and TAA?

(§ 112(b)(17)(A)(ii and iv).)

(e.) How is the State's workforce investment system working collaboratively with business and industry and the education community to develop strategies to overcome barriers to skill achievement and employment experienced by the populations listed above in section (b)(i)(a.) of this section and to ensure they are being identified as a critical pipeline of workers?

(f.) Describe how the State will ensure that the full array of One-Stop services are available to individuals with disabilities and that the services are fully accessible?

(g.) Describe the role LVER/DVOP staff have in the One-Stop Delivery System? How will the State ensure adherence to the legislative

requirements for veterans' staff? How will services under this Plan take into consideration the agreement reached between the Secretary and the State regarding veterans' employment programs? (§§ 112(b)(7), 322, 38 U.S.C. chapter 41 and 20 CFR 1001.120.)

(h.) Department of Labor regulations at 29 CFR part 37, require all recipients of Federal financial assistance from DOL to provide meaningful access to limited English proficient (LEP) persons. Federal financial assistance includes grants, training, equipment usage, donations of surplus property, and other assistance. Sub-recipients are also covered when Federal DOL funds are passed through from one recipient to a sub-recipient. Describe how the State will ensure access to services through the State's One-Stop delivery system by persons with limited English proficiency and how the State will meet the requirements of ETA Training and Employment Guidance Letter (TEGL) 26-02, (May 29, 2003) which provides guidance on methods of complying with the Federal rule.

(i.) Describe the State's strategies to enhance and integrate service delivery through the One-Stop delivery system for migrant and seasonal farm workers and agricultural employers. How will the State ensure that migrant and seasonal farm workers have equal access to employment opportunities through the State's One-Stop delivery system? Include the number of Migrant and Seasonal Farmworkers (MSFWs) the State anticipates reaching annually through outreach to increase their ability to access core, intensive, and training services in the One-Stop Career Center System.

(c) *Adult Education and Family Literacy:*

(i) Low income students

(§ 224(b)(10)(A).)

(ii) Individuals with disabilities

(§ 224(b)(10)(B).)

(iii) Single parents and displaced homemakers (§ 224(b)(10)(C).)

(iv) Individuals with multiple barriers to educational enhancement, including individuals with limited English proficiency (§ 224(b)(10)(D).)

(v) Criminal offenders in correctional institutions and other institutionalized individuals (§ 225.)

(d) *TAA and NAFTA-TAA*, describe how rapid response and basic readjustment services authorized under other Federal laws will be provided to trade-impacted workers.

(e) *Vocational Rehabilitation:*

(i) Minorities with most significant disabilities. (§ 21(c).)

(f) *TANF*, indicate whether the State intends to:

(i) Treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program;

(ii) Provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance. (§ 402(a)(1)(B) (i) and (ii).); and

(iii) Outline how the State intends to conduct a program designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men. (§ 401(a)(1)(A)(vi).)

(g) *SCSEP (§ 3(a)(1))*: Indicate how the State will serve individuals age 60 and older as a priority (§ 516(2)), and the following "preference" groups (§ 502(b)(1)(M)):

(i) Minorities.

(ii) Limited English-speakers.

(iii) Indian eligible individuals.

(iv) Individuals with the greatest economic need.

(h) *CSBG:*

(i) Low-income families.

(ii) Families and individuals receiving assistance under part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

(iii) Homeless families and individuals.

(iv) Migrant or seasonal farmworkers.

(v) Elderly low-income individuals and families.

(vi) Youth in low-income communities.

(i) *HUD Employment and Training Programs*: (Reminder: the following is a suggestion for incorporating HUD programs into your State's Unified Plan. However, following this guidance will not trigger funding for HUD programs):

(i) Public housing residents

(ii) Homeless and other groups

2. Identify the methods of collecting data and reporting progress on the special populations described in Question 1 of this section.

3. If your Plan includes Perkins III, Tech-Prep, Adult Education and Family Literacy or Vocational Rehabilitation, describe the steps the eligible agency will take to ensure equitable access to, and equitable participation in, projects or activities carried out with the respective funds by addressing the special needs of student, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin,

disability, and age. (§ 427(b) General Education Provisions Act.)

J. Professional Development and System Improvement

1. How will your State develop personnel to achieve the performance indicators for the programs included in your Plan?

In answering the above question, if your Unified Plan includes:

(a) *Perkins III*:

(i) Describe how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel will be provided. (§ 122(c)(2).)

(ii) Describe how the eligible agency will provide local educational agencies, area vocational and technical education schools, and eligible institutions in the State with technical assistance. (§ 122(c)(14).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) How will your State build the capacity of Local Boards to develop and manage high performing local workforce investment system? (§§ 111(d)(2) and 112(b)(14).)

(ii) Local Planning Process—Describe the State mandated requirements for local workforce areas' strategic planning. What assistance does the State provide to local areas to facilitate this process, (§ 112(b)(2) and 20 CFR 661.350(a)(13)), including:

- What oversight of the local planning process is provided, including receipt and review of Plans and negotiation of performance agreements? and
- How does the local plan approval process ensure that local plans are consistent with State performance goals and State strategic direction?

(iii) Oversight/Monitoring Process—Describe the monitoring and oversight criteria and procedures the State utilizes to move the system toward the State's vision and achieve the goals identified above, such as the use of mystery shoppers, performance agreements. (§ 112(b)(14).)

(c) *Vocational Rehabilitation*, describe the designated State agency's policies, procedures and activities to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified State rehabilitation professional and paraprofessional personnel for the designated State unit pursuant to section 101(a)(7) of the Act. (§ 101(a)(7).)

K. Performance Accountability

Nothing in this guidance shall relieve a State of its responsibilities to comply

with the accountability requirements of WIA Title I and II and the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), including, for example, the requirements to renegotiate performance levels at statutorily defined points in the 5-year Unified Plan cycle. The appropriate Secretary will negotiate adjusted levels of performance with the State for these programs prior to approving the State Plan.

1. What are the State's performance methodologies, indicators and goals in measurable, quantifiable terms for each program included in the Unified Plan and how will each program contribute to achieving these performance goals? (Performance indicators are generally set out by each program's statute.) In answering the above question, if your Unified Plan includes:

(a) *Perkins III and Tech-Prep*:

(i) Identify and describe the core indicators (§ 113(b)(2)(A)(i-iv).), a State level of performance for each core indicator of performance for the first two program years covered by the State Plan (§ 113(b)(3)(A)(ii).), any additional indicators identified by the eligible agency (§ 113(b)(1)(B).), and a State level of performance for each additional indicator (§ 113(b)(3)(B).)

(ii) Describe how the effectiveness of vocational and technical education programs will be evaluated annually. (§ 122(c)(6).)

(iii) Describe how individuals who are member of special populations will be provided with programs designed to enable the special populations to meet or exceed State adjusted levels of performance, and how it will prepare special populations for further learning and for high skill, high wage careers. (§ 122(c)(8)(C).)

(iv) Describe what steps the eligible agency will take to involve representatives of eligible recipients in the development of the State adjusted levels of performance. (§ 122(c)(9).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) Improved performance and accountability for customer-focused results are central features of WIA. To improve, States need not only systems in place to collect data and track performance, but also systems to analyze the information and modify strategies to improve performance. (See Training and Employment Guidance Letter (TEGL) 15-03, Common Measures Policy, December 10, 2003.) In this section, describe how the State measures the success of its strategies in achieving its goals, and how the State uses this data to continuously improve the system.

(j) Describe the State's performance accountability system, including any State-system measures and the State's performance goals established with local areas. Identify the performance indicators and goals the State has established to track its progress toward meeting its strategic goals and implementing its vision for the workforce investment system. For each of the core indicators, explain how the State worked with Local Boards to determine the level of the performance goals. Include a discussion of how the levels compare with the State's previous outcomes as well as with the State-adjusted levels of performance established for other States (if available), taking into account differences in economic conditions, the characteristics of participants when they entered the program and the services to be provided. Include a description of how the levels will help the State achieve continuous improvement over the two years of the Plan. (§§ 112(b)(3) and 136(b)(3).)

(ii) Describe any targeted applicant groups under WIA title I, the Wagner-Peyser Act or title 38 chapters 41 and 42 (Veterans Employment and Training Programs) that the State tracks. (§§ 111(d)(2), 112(b)(3) and 136(b)(2)(C).)

(iii) Identify any performance outcomes or measures in addition to those prescribed by WIA and what process is the State using to track and report them?

(iv) Describe any actions the Governor and State Board will take to ensure collaboration with key partners and continuous improvement of the Statewide workforce investment system. (§§ 111(d)(2) and 112(b)(1).)

(v) How do the State and Local Boards evaluate performance? What corrective actions (including sanctions and technical assistance) will the State take if performance falls short of expectations? How will the State and Local Boards use the review process to reinforce the strategic direction of the system? (§§ 111(d)(2), 112(b)(1), and 112(b)(3).)

(vi) What steps, has the State taken to prepare for implementation of new reporting requirements against the common performance measures as described in Training and Employment Guidance Letter (TEGL), 15-03, December 10, 2003, Common Measures Policy. **Note:** See TEGL 18-04 which articulates ETA's plans for future policy guidance on negotiating performance levels and common measures.

(vii) Include a proposed level for each performance measure for each of the program years covered by the Plan.

While the Plan is under review, the State will negotiate with the respective ETA Regional Administrator to set the appropriate levels for the next two years. At a minimum, States must identify the performance indicators required under section 136, and, for each indicator, the State must develop an objective and quantifiable performance goal for two program years. States are encouraged to address how the performance goals for local workforce investment areas and training providers will help them attain their Statewide performance goals. (§§ 112(b)(3) and 136.)

(c) *Adult Education and Family Literacy:*

(i) Include a description of how the eligible agency will evaluate annually the effectiveness of the Adult Education and Family Literacy activities, such as a comprehensive performance accountability system, based on the performance measures in section 212.

(ii) Identify levels of performance for the core indicators of performance described in section 212(b)(2)(A) for the first three program years covered by the Plan (§ 212(b)(3)(A)(ii).), and any additional indicators selected by the eligible agency. (§ 212 (b)(2)(B).)

(iii) Describe how such performance measures will be used to ensure the improvement of Adult Education and Family Literacy activities in the State or outlying area. (§ 224(b)(4).)

(d) *Unemployment Insurance:*

(i) Submit a Plan to achieve an enhanced goal in service delivery for areas in which performance is not deficient. Goals may be set at a State's own initiative or as the result of negotiations initiated by the Regional Office.

(ii) Identify milestones/intermediate accomplishments that the SWA will use to monitor progress toward the goals.

(e) *TANF*, outline how the State intends to establish goals and take action to prevent and reduce the incidence of out of wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State for calendar years 1996 through 2005. (§ 402(a)(1)(A)(v).)

(f) *SCSEP*: Provisions on performance are set forth in section G.1. (g)(xxv) of these instructions.

(g) *CSBG*:

(i) Describe how the State and all eligible entities in the State will participate in the Results Oriented Management and Accountability System, a performance measure system pursuant to Section 678E(b) of the Act, or an alternative system for measuring

performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization.

(ii) Describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the Plan and will use to ensure long-term compliance with requirements of the programs involved, including the comprehensive planning requirements. (§ 91.330)

2. Has the State developed any common performance goals applicable to multiple programs? If so, describe the goals and how they were developed.

L. *Data Collection*

1. What processes does the State have in place to collect and validate data to track performance and hold providers/operators/subgrantees accountable?

In answering the above question, if your Unified Plan includes:

(a) *Perkins III and Tech-Prep*:

(i) Describe how data will be reported relating to students participating in vocational and technical education in order to adequately measure the progress of the students, including special populations. (§ 122(c)(12).)

(ii) Describe how the data reported to the eligible agency from local educational agencies and eligible institutions under Perkins III and the data you report to the Secretary are complete, accurate, and reliable. (§ 122(c)(20).)

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, describe the State's common data system and reporting processes in place to track progress. Describe what data will be collected from the various One-Stop partners (beyond that required by DOL), use of quarterly wage records (including how your State accesses wage records), and how the Statewide system will have access to the information needed to continuously improve. (§ 112(b)(8)(B).)

(c) *Food Stamp Employment & Training*, describe how employment and training data will be compiled and where responsibility for employment and training reporting is organizationally located at the State level. Include the department, agency, and telephone number for the person(s) responsible for both financial and non-financial E&T reporting.

2. What common data elements and reporting systems are in place to promote integration of Unified Plan activities?

M. *Corrective Action*

1. Describe the corrective actions the State will take for each program, as applicable, if performance falls short of expectations.

In answering the above question, if your Unified Plan includes:

(a) *Vocational Rehabilitation*, include the results of an evaluation of the effectiveness of the vocational rehabilitation program, and a report jointly developed with the State Rehabilitation Council (if the State has a Council) on the progress made in improving effectiveness from the previous year including:

(i) An evaluation of the extent to which program goals were achieved and a description of the strategies that contributed to achieving the goals.

(ii) To the extent the goals were not achieved, a description of the factors that impeded that achievement.

(iii) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act. (§ 101(a)(15)(E)(i).)

(b) *Unemployment Insurance*, explain the reasons for the areas in which the State's performance is deficient. If a Corrective Action Plan was in place the previous fiscal year, provide an explanation of why the actions contained in that Plan were not successful in improving performance. Identify steps to improve performance, including an explanation of why the actions now specified will be more successful.

N. *Waiver and Work-Flex Requests*

1. Will your State be requesting waivers as a part of this Unified Plan?

In answering the above question, the following waiver provisions apply if your Unified Plan includes:

(a) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, States may submit a Workforce Flexibility (Work-Flex) Plan under WIA section 192 and/or a General Statutory Waiver Plan under WIA section 189(i) as part of the WIA Title I Plan. These waiver Plans may also be submitted separately, in which case they must identify related provisions in the State's Title I Plan. State Waiver Plans should be developed in accordance with planning requirements at subpart D of 20 CFR part 661.420 and planning guidelines issued by the Department of Labor.

(b) *Vocational Rehabilitation*, if a State requests a waiver of the Statewide requirement identified in assurance number 13 for the vocational rehabilitation program in Section III of this unified planning guidance, the

request must be made in accordance with the provisions of 34 CFR 361.26(b).

IV. Certifications and Assurances

General Certifications and Assurances

By signing the Unified Plan signature page, you are certifying that:

1. The methods used for joint planning and coordination of the programs and activities included in the Unified Plan included an opportunity for the entities responsible for planning or administering such programs and activities to review and comment on all portions of the Unified Plan. (WIA, § 501(c)(3)(B).)

In addition, if you submit your Unified Plan by posting it on an Internet Web site, you are certifying that:

2. The content of the submitted Plan will not be changed after it is submitted. Plan modifications must be approved by the reviewing State agency. It is the responsibility of the designated agency to circulate the modifications among the other agencies that may be affected by the changes.

In addition, the following certifications and assurances apply to the extent that the programs and activities are included in your State Unified Plan.

3. Nonconstruction Programs. By signing the Unified Plan signature page, you are certifying that:

1. The grantee has filed the Government-wide standard assurances for nonconstruction programs (SF 424). States can print SF 424 from <http://ocfo.ed.gov/grntinfo/appforms.htm>.

EDGAR Certifications, Nonconstruction Programs, Debarment, Drug-Free Work Place and Lobbying Certifications

You must include the following certifications for each of the State agencies that administer one of these programs: Perkins III, Tech-Prep, Adult Education and Literacy or vocational rehabilitation. A State may satisfy the EDGAR requirement by having all responsible State agency officials sign a single set of EDGAR certifications.

EDGAR Certifications

By signing the Unified Plan signature page, you are certifying that:

1. The Plan is submitted by the State agency that is eligible to submit the Plan. [34 CFR 76.104(a)(1).]

2. The State agency has authority under State law to perform the functions of the State under the program. [34 CFR 76.104(a)(2)]

3. The State legally may carry out each provision of the Plan. [34 CFR 76.104(a)(3)]

4. All provisions of the Plan are consistent with State law. [34 CFR 76.104(a)(4)]

5. A State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the Plan. [34 CFR 76.104(a)(5)]

6. The State officer who submits the Plan, specified by title in the certification, has authority to submit the Plan. [34 CFR 76.104(a)(6)]

7. The agency that submits the Plan has adopted or otherwise formally approved the Plan. [34 CFR 76.104(a)(7)]

8. The Plan is the basis for State operation and administration of the program. [34 CFR 76.104(a)(8)]

9. A copy of the State Plan was submitted into the State Intergovernmental Review Process. [Executive Order 12372].

Debarment, Drug-Free Work Place, and Lobbying

By signing the Unified Plan signature page, you are certifying that:

1. The ED grantee has filed ED 80-0013. This form also applies to AEFLA and RSA. States can print ED 80-0013 from <http://ocfo.ed.gov/grntinfo/appforms.htm>.

Perkins III

By signing the Unified Plan signature page, the eligible agency is certifying that:

1. The State Plan complies with the requirements of title I of Perkins III and the provisions of the State Plan, including the provision of a financial audit of funds received under this title which may be included as part of an audit of other Federal or State programs. (§ 122(c)(10).)

2. None of the funds expended under title I of Perkins III will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, the employees of the purchasing entity, or any affiliate of such an organization. (§ 122(c)(11).)

3. Section 501(b)(1) provides that secondary vocational education programs authorized under Perkins III may only be included in a Unified Plan "with the prior approval of the legislature of the State." Documentation of this approval is submitted with the Unified Plan. State legislative approval may be conferred by a resolution adopted by votes of both houses of your State legislature (unless your State has a unicameral legislature) on any date following July 28, 1998. The resolution need not be freestanding; it may be

included as an amendment to other legislation. In either event, the resolution should be specific and refer to the requirements of section 501(b)(1) and must clearly differentiate between secondary and postsecondary vocational education.

WIA Title I/Wagner-Peyser Act/Veterans Programs

By signing the Unified Plan signature page, you are certifying that:

1. The State assures that it will establish, in accordance with section 184 of the Workforce Investment Act, fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State through the allotments made under sections 127 and 132. (§ 112(b)(11).)

2. The State assures that it will comply with section 184(a)(6), which requires the Governor to, every two years, certify to the Secretary, that—

a. the State has implemented the uniform administrative requirements referred to in section 184(a)(3);

b. the State has annually monitored local areas to ensure compliance with the uniform administrative requirements as required under section 184(a)(4); and

c. the State has taken appropriate action to secure compliance pursuant to section 184(a)(5). (§ 184(a)(6).)

3. The State assures that the adult and youth funds received under the Workforce Investment Act will be distributed equitably throughout the State, and that no local areas will suffer significant shifts in funding from year to year during the period covered by this Plan. (§ 112(b)(12)(B).)

4. The State assures that veterans will be afforded employment and training activities authorized in section 134 of the Workforce Investment Act, and the activities authorized in chapters 41 and 42 of title 38 U.S. Code. The State assures that it will comply with the veterans priority established in the Jobs for Veterans Act. (38 U.S.C. 4215.)

5. The State assures that the Governor shall, once every two years, certify one Local Board for each local area in the State. (§ 117(c)(2).)

6. The State assures that it will comply with the confidentiality requirements of section 136(f)(3).

7. The State assures that no funds received under the Workforce Investment Act will be used to assist, promote, or deter union organizing. (§ 181(b)(7).)

8. The State assures that it will comply with the nondiscrimination provisions of section 188, including an assurance that a Methods of

Administration has been developed and implemented. (§ 188.).

9. The State assures that it will collect and maintain data necessary to show compliance with the nondiscrimination provisions of section 188. (§ 185.).

10. The State assures that it will comply with the grant procedures prescribed by the Secretary (pursuant to the authority at section 189(c) of the Act) which are necessary to enter into grant agreements for the allocation and payment of funds under the Act. The procedures and agreements will be provided to the State by the ETA Office of Grants and Contract Management and will specify the required terms and conditions and assurances and certifications, including, but not limited to, the following:

a. General Administrative Requirements:

(i) 29 CFR part 97—Uniform Administrative Requirements for State and Local Governments (as amended by the Act).

(ii) 29 CFR part 96 (as amended by OMB Circular A-133)—Single Audit Act.

(iii) OMB Circular A-87—Cost Principles (as amended by the Act).

b. Assurances and Certifications:

(i) SF 424 B—Assurances for Non-construction Programs.

(ii) 29 CFR part 37—Nondiscrimination and Equal Opportunity Assurance (and regulation) 29 CFR 37.20.

(iii) CFR part 93—Certification Regarding Lobbying (and regulation).

(iv) 29 CFR part 98—Drug Free Workplace and Debarment and Suspension Certifications (and regulation).

c. Special Clauses/Provisions:

Other special assurances or provisions as may be required under Federal law or policy, including specific appropriations legislation, the Workforce Investment Act, or subsequent Executive or Congressional mandates.

11. The State certifies that the Wagner-Peyser Act Plan, which is part of this document, has been certified by the State Employment Security Administrator.

12. The State certifies that veterans' services provided with Wagner-Peyser Act funds will be in compliance with 38 U.S.C. chapter 41 and 20 CFR part 1001.

13. The State certifies that Wagner-Peyser Act-funded labor exchange activities will be provided by merit-based public employees in accordance with DOL regulations.

14. The State assures that it will comply with the MSFW significant office requirements in accordance with 20 CFR part 653.

15. The State certifies it has developed this Plan in consultation with local elected officials, Local Workforce Boards, the business community, labor organizations and other partners.

16. As a condition to the award of financial assistance from the Department of Labor under title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

a. Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA title I—financially assisted program or activity;

b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

c. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
d. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

e. The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

17. The State assures that funds will be spent in accordance with the Workforce Investment Act and the Wagner-Peyser Act and their regulations, written Department of Labor Guidance implementing these laws, and all other applicable Federal and State laws.

Adult Education and Family Literacy

By signing the Unified Plan signature page, you are certifying that:

1. The eligible agency will award not less than one grant to an eligible

provider who offers flexible schedules and necessary support services (such as child care and transportation) to enable individuals, including individuals with disabilities, or individuals with other special needs, to participate in Adult Education and Literacy activities, which eligible provider shall attempt to coordinate with support services that are not provided under this subtitle prior to using funds for Adult Education and Literacy activities provided under AEFLA for support services. (§ 224(b)(5).)

2. The funds received under subtitle A of title II of WIA will not be expended for any purpose other than for activities under subtitle A of title II of WIA. (§ 224(b)(6).)

3. The eligible agency will expend the funds under subtitle A of title II of WIA only in a manner consistent with fiscal requirements in section 241. (§ 224(b)(8).)

Food Stamp Employment and Training (FSET)

By signing the Unified Plan signature page, you are certifying that:

1. Federal funds allocated by the Department of Agriculture to the State under section 16(h)(1) of the Food Stamp Act of 1977 (the Act), or provided to the State as reimbursements under Sections 16(h)(2) and 16(h)(3) of the Act will be used only for operating an employment and training program under section 6(d)(4) of the Act.

2. The State will submit to the Food and Nutrition Service (FNS) annual updates to its Employment and Training Plan for the coming fiscal year. The updates are due by August 15 of each year. The annual update must include any changes the State anticipates making in the basic structure or operation of its program. At a minimum, the annual update must contain revisions to Tables 1 (Estimated Participant Levels), 2 (Estimated E&T Placement Levels), 4 (Operating Budget), and 5 (Funding Categories).

3. If significant changes are to be made to its E&T program during the fiscal year, the State will submit to FNS a request to modify its Plan. FNS must approve the modification request before the proposed change is implemented. The State may be liable for costs associated with implementation prior to approval. See "The Handbook on Preparing State Plans for Food Stamp Employment and Training Programs" for additional information.

4. The State will submit a quarterly E&T report, FNS-583. Reports are due no later than 45 days after the end of each Federal fiscal quarter. The information required on the FNS-583 is

listed in Exhibit 3 of the "The Handbook on Preparing State Plans for Food Stamp Employment and Training Programs."

5. The State will submit E&T program financial information on the SF-269, Financial Status Report. It must include claims for the 100 percent Federal grant, 50 percent matched funding, and participant reimbursements. The SF-269 is due 30 days after the end of each Federal fiscal quarter.

6. The State will deliver each component of its E&T program through the One-Stop delivery system, an interconnected strategy for providing comprehensive labor market and occupational information to job seekers, employers, core services providers, other workforce employment activity providers, and providers of workforce education activities. If the component is not available locally through such a system, the State may use another source.

Vocational Rehabilitation

By signing the Unified Plan signature page, you are certifying that:

1. As a condition for the receipt Federal funds under title I, part B of the Rehabilitation Act for the provision of vocational rehabilitation services, the designated State agency agrees to operate and administer the State Vocational Rehabilitation Services Program in accordance with provisions of this title I State Plan, the Act and all applicable regulations, policies and procedures established by the Secretary. Funds made available under section 111 of the Act are used solely for the provision of vocational rehabilitation services under title I and the administration of the title I State Plan.

2. As a condition of the receipt of Federal funds under title VI, part B of the Act for supported employment services, the designated State agency agrees to operate and administer the State Supported Employment Services Program in accordance with the provisions of the supplement to this State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary. Funds made available under title VI, part B are used solely for the provision of supported employment services and the administration of the supplement to the title I State Plan.

3. The designated State agency or designated State unit is authorized to submit this State Plan under title I of the Act and its supplement under title VI, part B of the Act.

4. The State submits only those policies, procedures, or descriptions required under this State Plan and its

supplement that have not been previously submitted to and approved by the Commissioner of the Rehabilitation Services Administration. (§ 101(a)(1)(B).)

5. The State submits to the Commissioner at such time and in such manner as the Secretary determines to be appropriate, reports containing annual updates of the information relating to the: comprehensive system of personnel development; assessments, estimates, goals and priorities, and reports of progress; innovation and expansion activities; and requirements under title I, part B or title VI, part B of the Act. (§ 101(a)(23).)

6. The State Plan and its supplement are in effect subject to the submission of such modifications as the State determines to be necessary or as the Commissioner may require based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Act by a Federal court or the highest court of the State, or a finding by the Commissioner of State noncompliance with the requirements of the Act, until the State submits and receives approval of a new State Plan or Plan supplement. (§ 101(a)(1)(C).)

7. The State has an acceptable plan for carrying out part B of title VI of the Act, including the use of funds under that part to supplement funds made available under part B of title I of the Act to pay for the cost of services leading to supported employment. (§ 101(a)(22).)

8. The designated State agency, prior to the adoption of any policies or procedures governing the provision of vocational rehabilitation services under the State Plan and supported employment services under the supplement to the State Plan, including making any amendment to such policies and procedures, conducts public meetings throughout the State after providing adequate notice of the meetings, to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consults with the Director of the client assistance program, and, as appropriate, Indian tribes, tribal organizations, and Native Hawaiian organizations on the policies or procedures. (§ 101(a)(16)(A).)

9. The designated State agency takes into account, in connection with matters of general policy arising in the administration of the Plan, the views of individuals and groups of individuals who are recipients of vocational rehabilitation services, or in appropriate cases, the individual's representatives; personnel working in programs that

provide vocational rehabilitation services to individuals with disabilities; providers of vocational rehabilitation services to individuals with disabilities; the Director of the client assistance program; and the State Rehabilitation Council, if the State has such a Council. (§ 101(a)(16)(B))

10. The designated State agency (or, as appropriate, agencies) is a State agency that is:

a. __ primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; or

b. __ not primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and includes within the State agency a vocational rehabilitation bureau, or division, or other organizational unit that: is primarily concerned with vocational rehabilitation, or vocational and other rehabilitations, of individuals with disabilities, and is responsible for the designated State agency's vocational rehabilitation program; has a full-time director; has a staff, all or substantially all of whom are employed full time on the rehabilitation work of the organizational unit; and is located at an organizational level and has an organizational status within the designated State agency comparable to that of other major organizational units of the designated State agency. (§ 101(a)(2)(B).)

11. The designated State agency (or, as appropriate, agencies):

a. __ is an independent commission that is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State; is consumer-controlled by persons who are individuals with physical or mental impairments that substantially limit major life activities; and represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind; includes family members, advocates, or other representatives, of individuals with mental impairments; and undertakes the functions set forth in section 105(c)(4) of the Act; or

b. __ has established a State Rehabilitation Council that meets the criteria set forth in section 105 of the Act and the designated State unit: jointly with the Council develops, agrees to, and reviews annually State goals and priorities, and jointly submits annual reports of progress with the Council, in accordance with the provisions of section 101(a)(15) of the Act; regularly consults with the Council

regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services; includes in the State Plan and in any revision to the State Plan, a summary of input provided by the Council, including recommendations from the annual report of the Council described in section 105(c)(5) of the Act, the review and analysis of consumer satisfaction described in section 105(c)(4), and other reports prepared by the Council, and the response of the designated State unit to such input and recommendations, including explanations for rejecting any input or recommendation; and transmits to the Council all Plans, reports, and other information required under this title to be submitted to the Secretary; all policies, and information on all practices and procedures, of general applicability provided to or used by rehabilitation personnel in carrying out this title; and copies of due process hearing decisions issued under this title, which shall be transmitted in such a manner as to ensure that the identity of the participants in the hearings is kept confidential. (§ 101(a)(21).)

12. The State provides for financial participation, or if the State so elects, by the State and local agencies, to provide the amount of the non-Federal share of the cost of carrying out title I, part B of the Act. (§ 101(a)(3).)

13. The Plan is in effect in all political subdivisions of the State, except that in the case of any activity that, in the judgment of the Commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with disabilities or groups of individuals with disabilities, the Commissioner may waive compliance with the requirement that the Plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by the Commissioner, but only if the non-Federal share of the cost of the vocational rehabilitation services involved is met from funds made available by a local agency (including funds contributed to such agency by a private agency, organization, or individual); and in a case in which earmarked funds are used toward the non-Federal share and such funds are earmarked for particular geographic areas within the State, the earmarked funds may be used in such areas if the State notifies the Commissioner that the State cannot provide the full non-Federal share without such funds. (§ 101(a)(4).)

14. The State agency employs methods of administration found by the Commissioner to be necessary for the proper and efficient administration of the State Plan. (§ 101(a)(6)(A).)

15. The designated State agency and entities carrying out community rehabilitation programs in the State, who are in receipt of assistance under title I of the Act, take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as set forth in section 503 of the Act. (§ 101(a)(6)(B).)

16. Facilities used in connection with the delivery of services assisted under the State Plan comply with the provisions of the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped," approved on August 12, 1968 (commonly known as the "Architectural Barriers Act of 1968"), with section 504 of the Act and with the Americans with Disabilities Act of 1990. (§ 101(a)(6)(C).)

17. If, under special circumstances, the State Plan includes provisions for the construction of facilities for community rehabilitation programs—

a. The Federal share of the cost of construction for the facilities for a fiscal year will not exceed an amount equal to 10 percent of the State's allotment under section 110 for such year;

b. The provisions of section 306 (as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1998) shall be applicable to such construction and such provisions shall be deemed to apply to such construction; and

c. There shall be compliance with regulations the Commissioner shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of facilities for community rehabilitation programs) because the Plan includes such provisions for construction. (§ 101(a)(17).)

18. The designated State unit submits, in accordance with section 101(a)(10) of the Act, reports in the form and level of detail and at the time required by the Commissioner regarding applicants for and eligible individuals receiving services under the State Plan and the information submitted in the reports provides a complete count, unless sampling techniques are used, of the applicants and eligible individuals in a manner that permits the greatest possible cross-classification of data and ensures the confidentiality of the

identity of each individual. (§ 101(a)(10)(A) and (F).)

19. The designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under part A of title VI of the Act, upon the determination by the designated State agency that such for-profit organizations are better qualified to provide such vocational rehabilitation services than non-profit agencies and organizations. (§ 101(a)(24)(A).)

20. The designated State agency has cooperative agreements with other entities that are components of the Statewide workforce investment system of the State in accordance with section 101(a)(11)(A) of the Act and replicates these cooperative agreements at the local level between individual offices of the designated State unit and local entities carrying out activities through the Statewide workforce investment system. (§ 101(a)(11)(A) and (B).)

21. The designated State unit, the Statewide Independent Living Council established under section 705 of the Act, and the independent living centers described in part C of title VII of the Act within the State have developed working relationships and coordinate their activities. (§ 101(a)(11)(E).)

22. If there is a grant recipient in the State that receives funds under part C of the Act, the designated State agency has entered into a formal agreement that meets the requirements of section 101(a)(11)(F) of the Act with each grant recipient. (§ 101(a)(11)(F).)

23. Except as otherwise provided in part C of title I of the Act, the designated State unit provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides such services to other significant populations of individuals with disabilities residing in the State. (§ 101(a)(13).)

24. No duration of residence requirement is imposed that excludes from services under the Plan any individual who is present in the State. (§ 101(a)(12).)

25. The designated State agency has implemented an information and referral system that is adequate to ensure that individuals with disabilities are provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining, or regaining employment, and

are appropriately referred to Federal and State programs, including other components of the Statewide workforce investment system in the State. (§ 101(a)(20).)

26. In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the State who apply for the services, individuals with the most significant disabilities, in accordance with criteria established by the State for the order of selection, will be selected first for the provision of vocational rehabilitation services and eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system implemented under section 101(a)(20) of the Act. (§ 101(a)(5)(C) and (D).)

27. Applicants and eligible individuals, or, as appropriate, the applicants' representatives or the individuals' representatives, are provided information and support services to assist the applicants and eligible individuals in exercising informed choice throughout the rehabilitation process, consistent with the provisions of section 102(d) of the Act. (§ 101(a)(19).)

28. An individualized plan for employment meeting the requirements of section 102(b) of the Act will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services, except that in a State operating under an order of selection, the Plan will be developed and implemented only for individuals meeting the order of selection criteria; services under this Plan will be provided in accordance with the provisions of the individualized plan for employment. (§ 101(a)(9).)

29. Prior to providing any vocational rehabilitation services, except:

a. Assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

b. Counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 102(d) of the Act;

c. Referral and other services to secure needed services from other agencies through agreements developed under section 101(a)(11) of the Act, if such services are not available under this State Plan;

d. Job-related services, including job search and placement assistance, job

retention services, follow-up services, and follow-along services;

e. Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices; and

f. Post-employment services consisting of the services listed under subparagraphs (a) through (e), to an eligible individual, or to members of the individual's family, the State unit determines whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual unless the determination of the availability of comparable services and benefits under any other program would interrupt or delay:

Progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

An immediate job placement; or
Provision of such service to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional. (§ 101(a)(8)(A).)

30. The Governor of the State in consultation with the designated State vocational rehabilitation agency and other appropriate agencies ensures that there is an interagency agreement or other mechanism for interagency coordination that meets the requirements of section 101(a)(8)(B)(i)–(iv) of the Act between any appropriate public entity, including the State Medicaid program, public institution of higher education, and a component of the Statewide workforce investment system, and the designated State unit so as to ensure the provision of the vocational rehabilitation services identified in section 103(a) of the Act, other than the services identified as being exempt from the determination of the availability of comparable services and benefits, that are included in the individualized plan for employment of an eligible individual, including the provision of such services during the pendency of any dispute that may arise in the implementation of the interagency agreement or other mechanism for interagency coordination. (§ 101(a)(8)(B).)

31. The State agency conducts an annual review and reevaluation of the status of each individual with a disability served under this State Plan who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act (29 U.S.C.

214(c)) for 2 years after the achievement of the outcome (and annually thereafter if requested by the individual or, if appropriate, the individual's representative), to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment; provides for the input into the review and reevaluation, and a signed acknowledgment that such review and reevaluation have been conducted, by the individual with a disability, or, if appropriate, the individual's representative; and makes maximum efforts, including the identification and provision of vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist such individuals in engaging in competitive employment. (§ 101(a)(14).)

32. Funds made available under title VI, part B of the Act will only be used to provide supported employment services to individuals who are eligible under this part to receive the services. (§ 625(b)(6)(A).)

33. The comprehensive assessments of individuals with significant disabilities conducted under section 102(b)(1) of the Act and funded under title I will include consideration of supported employment as an appropriate employment outcome. (§ 625(b)(6)(B).)

34. An individualized plan for employment, as required by section 102 of the Act, will be developed and updated using funds under title I in order to specify the supported employment services to be provided; specify the expected extended services needed; and identify the source of extended services, which may include natural supports, or to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, a statement describing the basis for concluding that there is a reasonable expectation that such sources will become available. (§ 625(b)(6)(C).)

35. The State will use funds provided under title VI, part B only to supplement, and not supplant, the funds provided under title I, in providing supported employment services specified in the individualized plan for employment. (§ 625(b)(6)(D).)

36. Services provided under an individualized plan for employment will be coordinated with services provided under other individualized plans established under other Federal or State programs. (§ 625(b)(6)(E).)

37. To the extent job skills training is provided, the training will be provided on site. (§ 625(b)(6)(F).)

38. Supported employment services will include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities. (§ 625(b)(G).)

39. The State will expend not more than 5 percent of the allotment of the State under title VI, part B for administrative costs of carrying out this part. (§ 625(b)(7).)

40. The supported employment supplement to the title I State Plan contains such other information and be submitted in such manner as the Commissioner of the Rehabilitation Services Administration may require. (§ 625(b)(8).)

Unemployment Insurance

The Governor, by signing the Unified Plan Signature Page, certifies that:

1. The SWA will comply with the following assurances, and that the SWA will institute plans or measures to comply with the following requirements. Because the Signature Page incorporates the assurances by reference into the Unified Plan, States should not include written assurances in their Unified Plan submittal. The assurances are identified and explained in Paragraphs (2)–(11) below.

2. Assurance of Equal Opportunity (EO). As a condition to the award of financial assistance from ETA:

(a) The State assures that it will comply with the nondiscrimination provisions of WIA section 188, and its implementing regulations at 29 CFR part 37, including an assurance that a Method of Administration has been developed and implemented. (§§ 188 and 112(b)(17).);

(b) The State assures that it will collect and maintain data necessary to show compliance with the nondiscrimination provisions of section 188, as provided in the regulations implementing that section (§ 185).)

3. Assurance of Administrative Requirements and Allowable Cost Standards. The SWA will comply with administrative requirements and cost principles applicable to grants and cooperative agreements as specified in 20 CFR part 601 (Administrative Procedure), 29 CFR part 93 (Lobbying Prohibitions), 29 CFR part 96 (Audit Requirements), 29 CFR part 97 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and OMB

Circular A–87 (Revised), 60 FR 26484 (May 17, 1995), further amended at 62 FR 45934 (August 29, 1997) (Cost Principles for State, Local, and Indian Tribal Governments), and with administrative requirements for debarment and suspension applicable to subgrants or contracts as specified in 29 CFR part 98 (Debarment and Suspension). The cost of State staff travel to regional and national meetings and training sessions is included in the grant funds. It is assured that State staff will attend mandatory meetings and training sessions, or unused funds will be returned.

States that have subawards to organizations covered by audit requirements of OMB Circular A–133 (Revised) (Audit Requirements of Institutions of Higher Education and Other Non-Profits) must (1) ensure that such subrecipients meet the requirements of that circular, as applicable, and (2) resolve audit findings, if any, resulting from such audits, relating to the UI program.

(a) The SWA also assures that it will comply with the following specific administrative requirements.

(i) Administrative Requirements. Program Income. Program income is defined in 29 CFR 97.25 as gross income received by a grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. States may deduct costs incidental to the generation of UI program income from gross income to determine net UI program income. UI program income may be added to the funds committed to the grant by ETA. The program income must be used only as necessary for the proper and efficient administration of the UI program. Any rental income or user fees obtained from real property or equipment acquired with grant funds from prior awards shall be treated as program income under this grant.

Budget Changes. Except as specified by terms of the specific grant award, ETA, in accordance with the regulations, waives the requirements in 29 CFR 97.30(c)(1)(ii) that States obtain prior written approval for certain types of budget changes.

Real Property Acquired with Reed Act Funds. The requirements for real property acquired with Reed Act or other non-Federal funds and amortized with UI grants are in UIPL 39–97, dated September 12, 1997, and in 29 CFR 97.31 to the extent amortized with UI grants.

Equipment Acquired with Reed Act Funds. The requirements for equipment acquired with Reed Act or other non-

Federal funds and amortized with UI grants are in UIPL 39–97, dated September 12, 1997, and in 29 CFR 97.31 to the extent amortized with UI grants.

Real Property, Equipment, and Supplies. Real property, equipment, and supplies acquired under prior awards are transferred to this award and are subject to the relevant regulations at 29 CFR part 97.

For super-microcomputer systems and all associated components which were installed in States for the purpose of Regular Reports, Benefits Accuracy Measurement, and other UI Activities, the requirements of 29 CFR part 97 apply. The National Office reserves the right to transfer title and issue disposition instructions in accordance with paragraph (g) of Federal regulations at 29 CFR 97.32. States also will certify an inventory list of system components which will be distributed annually by ETA.

Standard Form 272, Federal Cash Transactions Report. In accordance with 29 CFR 97.41(c), SESAs are required to submit a separate SF 272 for each sub-account under the Department of Health and Human Services (DHHS) Payment Management System. However, SESAs are exempt from the requirement to submit the SF 272A, Continuation Sheet.

(ii) Exceptions and Expansions to Cost Principles. The following exceptions or expansions to the cost principles of OMB Circular No. A–87 (Revised) are applicable to SESAs:

—Employee Fringe Benefits. As an exception to OMB Circular A–87 (Revised) with respect to personnel benefit costs incurred on behalf of SESA employees who are members of fringe benefit plans which do not meet the requirements of OMB Circular No. A–87 (Revised), Attachment B, item 11, the costs of employer contributions or expenses incurred for SESA fringe benefit plans are allowable, provided that:

For retirement plans, all covered employees joined the plan before October 1, 1983; the plan is authorized by State law; the plan was previously approved by the Secretary; the plan is insured by a private insurance carrier which is licensed to operate this type of plan in the applicable State; and any dividends or similar credits because of participation in the plan are credited against the next premium falling due under the contract.

For all SESA fringe benefit plans other than retirement plans, if the Secretary granted a time extension after October 1, 1983, to the existing approval

of such a plan, costs of the plan are allowable until such time as the plan is comparable in cost and benefits to fringe benefit plans available to other similarly employed State employees. At such time as the cost and benefits of an approved fringe benefit plan are equivalent to the cost and benefits of plans available to other similarly employed State employees, the time extension will cease and the cited requirements of OMB Circular A-87 (Revised) will apply. For retirement plans and all other fringe benefit plans covered above, any additional costs resulting from improvements to the plans made after October 1, 1983, are not chargeable to UI grant funds.

—UI Claimant's Court Appeals Costs. To the extent authorized by State law, funds may be expended for reasonable counsel fees and necessary court costs, as fixed by the court, incurred by the claimant on appeals to the courts in the following cases:

Any court appeal from an administrative or judicial decision favorable in whole or in part for the claimant;

Any court appeal by a claimant from a decision which reverses a prior decision in his/her favor;

Any court appeal by a claimant from a decision denying or reducing benefits awarded under a prior administrative or judicial decision;

Any court appeal as a result of which the claimant is awarded benefits;

Any court appeal by a claimant from a decision by a tribunal, board of review, or court which was not unanimous; and

Any court appeal by a claimant where the court finds that a reasonable basis exists for the appeal.

Reed Act. Payment from the SESA's UI grant allocations, made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (Section 903(c)(2) of the Social Security Act, as amended (42 U.S.C. 1103(c)(2)), are allowable costs provided that:

The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State-owned real property (as defined in 29 CFR 97.3); and

With respect to each acquisition or improvement of property, the payments are accounted for as credit against equivalent amounts of Reed Act funds previously withdrawn under the respective appropriation.

Prior Approval of Equipment Purchases. As provided for in OMB

Circular No. A-87 (Revised), Attachment B, item 19, the requirement that grant recipients obtain prior approval from the Federal grantor agency for all purchases of equipment (as defined in 29 CFR 97.3) is waived and approval authority is delegated to the SESA Administrator.

4. Assurance of Management Systems, Reporting, and Record Keeping. The SESA assures that:

—Financial systems provide fiscal control and accounting procedures sufficient to permit timely preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended improperly (29 CFR 97.20.)

The financial management system and the program information system provide Federally-required reports and records that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit, and evaluation purposes.

It will submit reports to ETA as required in instructions issued by ETA and in the format ETA prescribes.

The financial management system provides for methods to insure compliance with the requirements applicable to procurement and grants as specified in 29 CFR part 98 (Debarment and Suspension), and for obtaining the required certifications under 29 CFR 98.510(b) regarding debarment, suspension, ineligibility, and voluntary exclusions for lower tier covered transactions.

5. Assurance of Program Quality. The SESA assures that it will administer the UI program in a manner that ensures proper and efficient administration. "Proper and efficient administration" includes performance measured by ETA through Tier I measures, Tier II measures, program reviews, and the administration of the UI BAM, BTQ measures, and TPS program requirements.

6. Assurance on Use of Unobligated Funds. The SESA assures that non-automation funds will be obligated by December 31 of the following fiscal year, and liquidated (expended) within 90 days thereafter. ETA may extend the liquidation date upon written request. Automation funds must be obligated by the end of the 3rd fiscal year, and liquidated within 90 days thereafter. ETA may extend the liquidation date upon written request. Failure to comply with this assurance may result in disallowed costs from audits or review findings.

7. Assurance of Disaster Recovery Capability. The SESA assures that it will maintain a Disaster Recovery Plan.

8. Assurance of Conformity and Compliance. The SESA assures that the State law will conform to, and its administrative practice will substantially comply with, all Federal UI law requirements, and that it will adhere to DOL directives.

9. Assurance of Participation in UI PERFORMS. The SESA assures that it will participate in the annual UI PERFORMS State Quality Service Planning process by submitting any Corrective Action Plans (CAPs) required under UI PERFORMS as part of the State Quality Service Planning process.

10. Assurance of Financial Reports and Planning Forms. The SESA assures that it will submit financial reports and financial planning forms as required by the Department of Labor to support the annual allocation of administrative grants.

11. Assurance of Prohibition of Lobbying Costs (29 CFR part 93). The SESA assures and certifies that, in accordance with the DOL Appropriations Act, no UI grant funds will be used to pay salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States. (k). Drug-Free Workplace (29 CFR part 98). The SESA assures and certifies that it will comply with the requirements at this part.

Temporary Assistance for Needy Families (TANF)

By signing the Unified Plan signature page, you are certifying that:

1. During the fiscal year, the State will operate a child support enforcement program under the State Plan approved under part D. (§ 402(a)(2).)

2. During the fiscal year, the State will operate a foster care and adoption assistance program under the State Plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State Plan under title XIX. (§ 402(a)(3).)

3. Which State agency or agencies will administer and supervise the TANF program for the fiscal year, which shall include assurances that local governments and private sector organizations have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and have had at least 45 days to submit comments on the Plan and the design of such services. (§ 402(a)(4).)

4. That, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the

State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to Federally-funded assistance under the State's TANF program (§ 402(a)(5).)

5. That the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage. (§ 402(a)(6).)

6. (Optional) that the State has established and is enforcing standards and procedures to:

Screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

Refer such individuals to counseling and supportive services; and

Waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence. (§ 402(a)(7)(A)(i), (ii), (iii).)

Senior Community Service Employment Program (SCSEP)

By signing this Unified Plan you also certify that the State agrees to meet the requirements of or submit the following documents as applicable, in addition to the general ETA requirements for receipt of Federal funds:

• General Administrative Requirements:

—29 CFR part 97—Uniform

Administrative Requirements for State and Local Governments (as amended by the Act).

—29 CFR part 96 (as amended by OMB Circular A-133)—Single Audit Act.

—OMB Circular A-87—Cost Principles (as amended by the Act).

• Assurances and Certifications:

—SF 424—Application for Federal Assistance.

—SF 424A—Budget Information—Non-construction Programs.

—SF 424 B—Assurances for Non-construction Programs.

—Hatch Act Notices must be placed in all work locations.

—Privacy Statement must be provided to all participants.

—ETA-5140—Quarterly Progress Report.

—ETA-8705—Equitable Distribution Report.

By signing the Unified Plan signature page, you are certifying that you will abide by the following special clauses:

• Web site contact information must be updated on a regular basis.

• Attendance is required at any significant training to be held during the program year.

• Any recipient that did not meet the 20 percent performance goal for unsubsidized placements in Program Year 2003 or 2004 must attach a corrective action plan unless the recipient has already achieved this goal in Program Year 2004 at the time of application.

Community Services Block Grant (CSBG)

By signing the Unified Plan signature page, you are certifying that:

1. Funds made available through the grant or allotment will be used—

To support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

To remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act); to secure and retain meaningful employment;

To attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

To make better use of available income;

To obtain and maintain adequate housing and a suitable living environment;

To obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and to achieve greater participation in the affairs of the communities involved, including the development of public and private

grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to—

Document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts.

2. The needs of youth in low-income communities are being met through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as—

Programs for the establishment of violence-free zones that would involve youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

After-school child care programs. There is an effective use of, and to coordinate, other programs related to the purposes of this subtitle (including State welfare reform efforts).

3. There is an effective use of, and to coordinate with, other programs related to the purposes of this subtitle (including State welfare reform efforts).

4. A description is provided on how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 675C(b) in accordance with this subtitle, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this subtitle.

5. Information is provided by eligible entities in the State, containing—

A description of the service delivery system, for services provided or coordinated with funds made available through grants made under Section 675C(a), targeted to low-income individuals and families in communities within the State;

A description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and follow-up consultations;

A description of how funds made available through grants made under

section 675C(a) will be coordinated with other public and private resources; and

A description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this subtitle, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting.

6. Eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals.

7. The State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 101 of such Act, in the State and in communities with entities providing activities through Statewide and local workforce investment systems under the Workforce Investment Act of 1998.

8. The State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI (relating to low-income home energy assistance) are conducted in such community.

9. The State will permit and cooperate with Federal investigations undertaken in accordance with section 678D.

10. Any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this subtitle will not have its funding terminated under this subtitle, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 678C(b).

11. The State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other

mechanism) of the eligible entity to petition for adequate representation.

12. The State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation.

13. The State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this subtitle for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State Plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs.

14. The State and all eligible entities in the State will participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to Section 678E(b), or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization.

15. The information describing how the State will carry out the assurances is described in this subsection.

Attachment A

ETA Regional Administrators

January 2005

Region 1—Boston/New York

Douglas Small, Regional Administrator, U.S. Department of Labor/ETA, JFK Federal Building, Room E-350, Boston, Massachusetts 02203, (617) 788-0170, FAX: 617-788-0101, Small.Douglas@dol.gov.

Region 2—Philadelphia

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Region 3—Atlanta

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Region 4—Dallas/Denver

Joseph C. Juarez, Regional Administrator, U.S. Department of Labor/ETA, Federal Building, Rm. 317, 525 Griffin Street, Dallas, Texas 75202, (214) 767-8263, FAX: 214-767-5113, Juarez.joseph@dol.gov.

Region 5—Chicago/Kansas City

Byron Zuidema, Regional Administrator, U.S. Department of Labor/ETA, 230 S. Dearborn Street, Rm. 628, Chicago, Illinois 60604, (312) 596-5400, FAX: 312-596-5401, Zuidema.byron@dol.gov.

Region 6—San Francisco/Seattle

Richard Trigg, Regional Administrator, U.S. Department of Labor/ETA, 71 Stevenson Street, Rm. 830, San Francisco, California 94119-3767, (415) 975-4610, FAX: 415-975-4612, trigg.richard@dol.gov.

Attachment B

1. Unified Plan Activities and Programs Checklist

Under section 501 of the Workforce Investment Act, the following activities or programs may be included in a State's Unified Plan. From the list below, please place a check beside the programs and activities your State or Commonwealth is including in this Unified Plan.

The State Unified Plan shall cover one or more of the following programs and activities:

- Secondary vocational education programs (Perkins III/Secondary). Note that inclusion of this program requires prior approval of State legislature. (Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 *et seq.*)
- Postsecondary vocational education programs (Perkins III/Postsecondary). Note that for the purposes of what the State Unified Plan shall cover, Perkins III/Secondary and Perkins III/Postsecondary count as one program. (Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 *et seq.*)
- Activities authorized under title I, Workforce Investment Systems (Workforce Investment Activities for Adults, Dislocated Workers and Youth, or WIA title I, and the Wagner-

Peyser Act) (Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*))

Activities authorized under title II, Adult Education and Family Literacy Programs) (Workforce Investment Act of 1998 (20 U.S.C. 9201 *et seq.*))

The State Unified Plan may cover one or more of the following programs and activities:

Food Stamp Employment and Training Program, or FSET (7 U.S.C. 2015(d))

Activities authorized under chapter 2 of title II of the Trade Act of 1974 (Trade Act Programs) (19 U.S.C. 2271 *et seq.*)

Programs authorized under part B of title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), other than section 112 of such Act (29 U.S.C. 732) (Vocational Rehabilitation)

Activities authorized under chapters 41 & 42 of title 38, U.S.C., and 20 CFR 1001 and 1005 (Veterans Programs, including Veterans Employment, Disabled Veterans' Outreach Program, and Local Veterans' Employment Representative Program)

Programs authorized under State unemployment compensation laws (Unemployment Insurance) (in accordance with applicable Federal law which is authorized under title III, title IX and title XII of the Social Security Act and the Federal Unemployment Tax Act)

Programs authorized under part A of title IV of the Social Security Act (Temporary Assistance for Needy Families (TANF)).

Programs authorized under title V of the Older Americans Act of 1965 (Senior Community Service Employment Program (SCSEP).) (42 U.S.C. 3056 *et seq.*) Training activities funded by the Department of Housing and Urban Development under the Community Development Block Grants (CDBG) and Public Housing Programs). Note that programs funded by the CDBG and Public Housing programs can only be included in your State Unified Plan if the State is the funds recipient, and approval of the Unified Plan will not trigger funding for these programs.

Community Development Block Grants

Public Housing

Programs authorized under the Community Services Block Grant Act (Community Services Block Grant, or CSBG) (42 U.S.C. 9901 *et seq.*)

2. Contact Information

Please complete one copy for EACH of the separate activities and programs included in your State Unified Plan.

Program: _____
 State Name for Program/Activity: _____
 Name of Grant Recipient Agency for Program/Activity: _____
 Address: _____
 Telephone Number: _____
 Facsimile Number: _____
 E-mail Address: _____
 Name of State Administrative Agency (if different from the Grant Recipient): _____
 Address: _____
 Telephone Number: _____
 Facsimile Number: _____
 E-mail Address: _____
 Name of Signatory Official: _____
 Address: _____
 Telephone Number: _____
 Facsimile Number: _____
 E-mail Address: _____

3. Plan Signature(s)

Governor (if Applicable)

As the Governor, I certify that for the State/Commonwealth of _____, for those activities and programs included in this Plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. I will provide subsequent changes in the designation of officials to the designated program or activity contact as such changes occur.

I further certify that, for those activities and programs included in this Plan that are under my jurisdiction, we will operate the workforce development programs included in this Unified Plan in accordance with this Unified Plan and the assurances described in section III of this Unified Plan.

Typed Name and Signature of Governor
 Date _____

Responsible State Official for Eligible Agency for Vocational Education (if Applicable)

I certify that for the State/Commonwealth of _____, for those activities and programs included in this Plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities

indicated for the programs and activities indicated. I will provide subsequent changes in the designation of officials to the designated program or activity contact as such changes occur.

I further certify that, for those activities and programs included in this Plan that are under my jurisdiction, we will operate the programs included in this Unified Plan in accordance with this Unified Plan and the applicable assurances described in section III of this Unified Plan.

Typed Name, Title, and Agency of Responsible State Official for Vocational Education
 Signature _____
 Date _____

Responsible State Official for Eligible Agency for Vocational Rehabilitation (if Applicable)

I certify that for the State/Commonwealth of _____, for those activities and programs included in this Plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. I will provide subsequent changes in the designation of officials to the designated program or activity contact as such changes occur.

I further certify that we will operate those activities and programs included in this Unified Plan that are under my jurisdiction in accordance with this Unified Plan and the assurances described in section III of this Unified Plan.

Typed Name, Title, and Agency of Responsible State Official for Vocational Rehabilitation
 Signature _____
 Date _____

Responsible State Official for Eligible Agency for Adult Education (if Applicable)

I certify that for the State/Commonwealth of _____, for those activities and programs included in this Plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. I will provide subsequent changes in the designation of officials to the designated program or activity contact as such changes occur.

I further certify that, for those activities and programs included in this Plan that are under my jurisdiction, we

will operate the programs included in this Unified Plan in accordance with this Unified Plan and the applicable assurances described in Section III of this Unified Plan.

Typed Name, Title, and Agency of Responsible State Official for Adult Education

Signature _____

Date _____
[FR Doc. 05-7175 Filed 4-11-05; 8:45 am]
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LIST OF PUBLIC LAWS

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H.R. 1270/P.L. 109-6

To amend the Internal Revenue Code of 1986 to extend the Leaking Underground Storage Tank Trust Fund financing rate. (Mar. 31, 2005; 119 Stat. 20)

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