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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–03–005]

RIN 0581–AC33

Voluntary Shell Egg Grading Regulations—Facilities and Equipment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the regulations governing the voluntary shell egg grading program. The revisions will add definitions that describe the official identification and packaging of shell eggs; provide that grading services may be requested or reported by electronic means; clarify the number of samples required for an appeal grading when the original samples are not available; require that plants provide two candling lights in an acceptable candling booth for grade determination; provide an additional method for lot identifying shell eggs; and clarify and update the facility and operating requirements of plants utilizing the voluntary grading service.

DATES: Effective Date: January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

Shell egg grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) and is offered on a fee-for-service basis. It is designed to assist in the orderly marketing of shell eggs by providing for the official certification of egg quality, quantity, size, temperature, packaging, and other factors.

Changing technology in egg production and processing requires that the regulations governing shell egg grading be updated. These revisions will update the requirements to bring them in line with the requirements that applicants utilizing official grading services must meet. After a plant makes an application for grading service, an agency representative conducts a plant survey. The survey determines if the plant premises, facility, equipment, and operation procedures can satisfactorily support the official grading of shell eggs. These prerequisite requirements are based on good manufacturing practices typically associated with food processing and have specific application to shell egg processing. The revisions include the following:

(1) Definitions. The definitions of ''chief of the grading branch'' and ''national supervisor'' will be revised to reflect the current organizational structure in AMS. New definitions for ''Agricultural Marketing Service or AMS'', ''consumer grades,'' ''packaging,'' ''packing,'' and ''United States Standards, Grades, and Weight Classes for Shell Eggs'' will be added to establish a clear meaning for these terms. (§ 56.1)

(2) Candling Lights. This revision will amend the candling light requirement from one to two and will require a candling booth of sufficient size to accommodate at least two candling lights for additional graders and supervisory visits. (§ 56.17)

(3) Communications. The revisions will allow alternate forms of electronic communications as are currently available in the market place. (§§ 56.21, 56.58)

(4) Temporary Grading Service. This revision will add temporary grading service as a type of grading service that could be requested by an applicant. The regulations will also be revised by providing that certificates may be issued to an applicant who utilizes temporary grading. (§§ 56.17, 56.56)

(5) Lot Numbering. This revision will update the regulations to reflect changes in the marking of shell eggs. (§ 56.37)

(6) Official Identification. The revision will clarify that only product which is identified with the grademark shall be officially identified under the supervision of a grader or quality assurance inspector. (§ 56.39)

(7) Types of Grading Services. The types of grading services available to an applicant will be added. (§ 56.28)

(8) Appeal Gradings. The revision will increase the sample size to improve the confidence level of results and properly resolve the issue prompting the applicant's appeal. (§ 56.65)

(9) Occupational Safety and Health Regulations. This revision will update the regulations to reflect that an applicant utilizing the official grading service must be in compliance with all applicable Federal, State, and local government occupational safety and health regulations. (§ 56.76)

(10) General Premises. General premise requirements will be added. The revision will specify that the premises of the facility be maintained in an appropriate manner. (§ 56.76)

(11) Structures and Facilities. The revision will update the regulations to reflect that all structures and facilities subject to moisture must be readily cleanable, sanitarily maintained, and impervious to moisture and that floors are constructed for proper drainage. (§ 56.76)

(12) Lavatories and Toilets. The revisions will also specify that the facilities be located in areas separate and away from the grading and processing rooms. (§ 56.76)

(13) Storage Areas. This revision will specify that adequate packing and packaging storage areas be provided and properly maintained in order that packing and packaging are stored in a dry, clean, and sanitary environment. (§ 56.76)

(14) Grading and Packing Rooms. The revision will update the requirements of the grading and packing rooms by specifying their sanitary design and construction. Additionally, the revision will specify that during operations the sanitation of the processing areas and equipment be maintained in a satisfactory manner. (§ 56.76)

(15) Shell Egg Cooler Rooms. The regulations will continue to provide that humidifying equipment capable of maintaining a relative humidity, which will minimize shrinkage, shall be provided. (§ 56.76)

(16) Shell Egg Protecting Operations. The revision will update the regulations by specifying that the requirements for shell egg protecting equipment include its sanitary design, maintenance, and operation. The revision will also

eliminate the requirement that previously used contaminated oil be heat treated prior to its reuse. (§ 56.76)

(17) Shell Egg Washing. The revision will specify that shell egg washing equipment be sanitarily designed and maintained in a clean and sanitary manner. The revision will also specify that shell egg drying equipment be sanitarily designed and maintained, that air used for drying must be filtered, and that filters are to be cleaned and maintained. (§ 56.76)

(18) Shell Egg Wash Water. The revision will clarify that the plant would be responsible for providing an accurate thermometer to measure the temperature of the wash water. (§ 56.76)

(19) Spray Rinse Sanitizer. The revision will revise the regulations to reflect that the spray rinse contains a sanitizer approved by the national supervisor of not less than 100 p/m nor more than 200 p/m of available chlorine or its equivalent. The revision will update the regulations to reflect that shell eggs receive an increased exposure to an approved sanitizer. (§ 56.76)

(20) Shell Egg Washing. The revision will reflect that shell eggs be removed from the processing equipment during any non-processing periods to prevent loss of egg quality from extended exposure to elevated temperatures. (§ 56.76)

(21) Removal of Washing Operation Steam and Vapors. The revision will specify that steam, vapors, or odors originating from washing and rinsing operations shall be exhausted to the outside of the building to prevent the development of an undesirable environment in the shell egg processing room. (§ 56.76)

(22) Shell Egg Packing. The revision will add that eggs that are to be identified with a grademark may be packed in other than fiber packing materials. (§ 56.76)

(23) Approval of Chemicals and Compounds. The regulations will be updated to reflect that the national supervisor, Poultry Programs is responsible for determining acceptance of the intended use of chemicals and compounds for their specified use. (§ 56.76)

Proposed Rule and Comments

The proposed rule was published in the **Federal Register** June 2, 2004 (69 FR 31039). The comment period ended August 2, 2004.

We received four timely comments: one from a shell egg producer, two from an industry organization, and one from a State department of agriculture.

The State department of agriculture suggested that shell egg processing facilities in the future should comply fully with 21 CFR part 110, giving variances where needed. The Good Manufacturing Practices promulgated by the Food and Drug Administration at 21 CFR part 110 already serve as a foundation for the Agency for the processing and facility requirements of the voluntary shell egg grading regulations. Moreover, the Agency will continue to use them as a source upon which the processing and facility requirements for this program are based.

Both the shell egg producer and the industry organization did not support requiring that cooler rooms holding officially identified shell eggs be capable of maintaining a relative humidity of 70% or higher. Both commenters discussed the difficulty of humidifying ambient air in the colder climates of the United States. The shell egg producer additionally addressed that shell eggs do not remain in egg producer's coolers more than a few days before they enter marketing channels where shell eggs are not subject to humidity requirements. The Agency revisited this issue and after considering the current trend of shell eggs promptly moving through marketing channels is withdrawing this proposal from the final rule. The Agency will not amend the regulations which currently provide the requirements that cooler rooms holding shell eggs that are identified with a consumer grade shall be equipped with humidifying equipment capable of maintaining a relative humidity to minimize shrinkage which affects the quality of shell eggs.

The industry organization suggested that the terms ''appropriate manner'' and ''sanitary'' be further clarified in order that shell egg graders apply these terms in a consistent manner. The Agency believes that the descriptors identified by the commenter provide the level of clarity appropriate for our regulatory language. These descriptors also can be found in the product indexes that provide detailed guidance to graders to assure that the regulations are being correctly implemented and to supervisors to assure that the program is being properly administrated.

The industry organization requested that egg producers be able to choose how to lot number shell eggs including continuing to have the option to lot number shell eggs on the carton. The Agency is not restricting how producers lot number shell eggs identified with an official grademark. Moreover, this revision provides producers with an additional option to apply a lot number on an individual shell egg.

The industry organization asked if the Agency will issue levels for quaternary ammonia and other sanitizers in sanitizer spray rinse. The strength of a sanitizer spray rinse is currently based on the concentration of chlorine or its equivalent. The Agency finds that this is an appropriate manner to describe the required level of concentration of the sanitizing solution.

When the proposed rule was published, the Agency inadvertently overlooked a technical revision of the terms describing the official grademark in § 56.76(g)(1). To clearly describe these marks, in § 56.76(g)(1), the Agency is removing the word ''consumer'' in the requirements for eggs officially identified with a grademark.

Executive Order 12866 and Effect on Small Entities

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of the rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA)(13 CFR 121.201) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. So that costs are shared by all users, these user fees are proportional to the volume of shell eggs graded. Shell egg processors are entitled to pack their eggs in packages bearing the USDA grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grademark. There are about 558 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 161 are official

plants that use USDA's grading service and would be subject to this proposed rule. Of these 161 official plants, 38 meet the small business definition.

Sections of the regulations are affected by changes in egg production and processing technology. This rule is intended to clarify and update this regulation and bring them in line with requirements that applicants utilizing official grading services currently are meeting. The revisions will add definitions that describe the official identification and packaging of shell eggs; provide that grading services may be requested or reported by electronic means; clarify the number of samples required for an appeal grading when the original samples are not available; require that plants provide two candling lights in an acceptable candling booth for grade determination; provide an additional method for lot identifying shell eggs; and clarify and update the facility and operating requirements of plants utilizing the voluntary grading service. Accordingly, the revision will not have a significant economic impact on a substantial number of small entities.

Executive Orders 12988

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

Paperwork Reduction

The information collection requirements in §§ 56.21(a), 56.21(c), 56.37, 56.56(a), 56.58, 56.76(f)(7), and 56.76(h) amended by this rule have been previously approved by OMB and assigned OMB control number 0581–0128 under the Paper Reduction Act of 1995.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. In § 56.1, revise the terms *chief of the grading branch* and *national supervisor* and add, alphabetically, the new terms *Agricultural Marketing Service or AMS, consumer grades, grademark, official standards, officially identified, packaging, packing,* and *United States Standards, Grades, and Weight Classes for Shell Eggs* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Agricultural Marketing Service or *AMS* means the Agricultural Marketing Service of the Department.

* * * * *

Chief of the Grading Branch means the Chief of the Grading Branch, Poultry Programs, AMS.

* * * * *

Consumer grades means U.S. Grade AA, A, and B.

* * * * *

Grademark means the official identification symbol (shield) used to identify eggs officially graded according to U.S. consumer grade standards.

* * * * *

National supervisor means (a) the officer in charge of the shell egg grading service of the AMS, and (b) other employees of the Department designated by the national supervisor.

* * * * *

Official standards means the official U.S. standards grades, and weight classes for shell eggs maintained by and available from Poultry Programs, AMS.

Officially identified means eggs that have official marks applied to the product under the authority of the AMS in accordance with the act and its regulations.

* * * * *

Packaging means the primary or immediate container in which eggs are packaged and which serves to protect, preserve, and maintain the condition of the eggs.

Packing means the secondary container in which the primary or immediate container is placed to protect, preserve, and maintain the condition of the eggs during transit or storage.

* * * * *

United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) means the official U.S. standards, grades, and weight classes for shell eggs that are maintained by and available from Poultry Programs, AMS.

* * * * *

§ 56.9 [Amended]

■ 3. Section 56.9 is revised by removing the numbers 56.76(e)(6) and 56.76(g) and adding in their place the numbers 56.76(f)(7) and 56.76(h) and adding the number 56.21(c).

■ 4. Section 56.17 is amended by revising the introductory text and paragraph (a)(5), and by adding a new paragraph (a)(6) to read as follows:

§ 56.17 Facilities and equipment for graders.

Facilities and equipment to be furnished by the applicant for use of graders in performing service on a resident or temporary basis shall include (when deemed necessary) the following:

* * * * *

(a) * * *

(5) Two candling lights that provide a sufficient combined illumination through both the aperture and downward through the bottom to facilitate accurate interior and exterior quality determinations.

(6) A candling booth adequately darkened and located in close proximity to the work area that is reasonably free of excessive noise. The booth must be sufficient in size to accommodate two graders, two candling lights, and other necessary grading equipment.

■ 5. Section 56.21 is amended by revising paragraph (a) and adding (c) to read as follows:

§ 56.21 How application for service may be made; conditions of service.

(a) *Noncontinuous grading service on a fee basis.* An application for any noncontinuous grading service on a fee basis may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by other electronic means.

* * * * *

(c) *Temporary grading service on a fee basis.* An application for grading service on a temporary basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations (including, but not limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be

admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

■ 6. Section 56.28 is added to read as follows:

§ 56.28 Types of grading service.

(a) *Noncontinuous grading service.* This type of service is performed when an applicant requests grading of a particular lot of shell eggs. Requests are made not on a regular basis. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service also may be called the fee grading service. Shell eggs graded under fee grading service are not eligible to be identified with the official grademarks shown in § 56.36.

(b) *Continuous grading service on a resident basis and continuous grading service on a nonresident basis.* Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty. Both of these services are performed when an applicant requests that a USDA licensed grader be stationed in the applicant's processing plant and grade shell eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty and the volume of shell eggs received into the plant, while nonscheduled service is based on the cumulative time required to perform the work and an administrative service charge. Shell eggs graded under resident grading service are only eligible to be identified with the official grademarks shown in § 56.36 when processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

(c) *Temporary grading service.* This type of service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Shell eggs graded under temporary grading service are only eligible to be identified with the official grademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

■ 7. Section 56.37 is amended by revising the section heading and first sentence to read as follows:

§ 56.37 Lot marking of officially identified shell eggs.

Shell eggs identified with the grademarks shown in § 56.36 shall be legibly lot numbered on either the individual egg, the carton, or the consumer package. * * *

* * * * *

■ 8. The undesignated center heading that precedes § 56.39 is revised to read as follows:

Prerequisites to Packaging Shell Eggs Identified With Grademarks

■ 9. In § 56.39, the first sentence is revised to read as follows:

§ 56.39 Quality assurance inspector required.

The official identification with the grademark of any product as provided in §§ 56.35 to 56.41, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. * * *

■ 10. Section 56.40 is amended by revising the section heading and paragraph (c) to read as follows:

§ 56.40 Grading requirements of shell eggs identified with grademarks.

* * * * *

(c) Shell eggs which are to bear the grademark shall be packed only from eggs of current production. They shall not possess any undesirable odors or flavors.

■ 11. In § 56.56, the first sentence of paragraphs (a) and (b) are both amended by adding the words ''or temporary'' between the words ''resident grading.''

■ 12. Section 56.58 is revised to read as follows:

§ 56.58 Advance information.

Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or electronically transmitted to the applicant, or to the applicant's designee, at the applicant's expense.

■ 13. In § 56.65, paragraph (b) is revised to read as follows:

§ 56.65 Procedures for appeal gradings.

* * * * *

(b) When the original samples are not available or have undergone a material change, the appeal sample size for the lot shall consist of double the samples required in § 56.4(b).

* * * * *

■ 14. Section 56.75 is revised to read as follows:

§ 56.75 Applicability of facility and operating requirements.

The provisions of § 56.76 shall be applicable to any grading service that is provided on a resident or temporary basis.

■ 15. Section 56.76 is revised to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

(a) Applicants must comply with all applicable Federal, State and local government occupational safety and health regulations.

(b) *General requirements for premises, buildings and plant facilities.* (1) The outside premises shall be free from refuse, rubbish, waste, unused equipment, and other materials and conditions which constitute a source of odors or a harbor for insects, rodents, and other vermin.

(2) The outside premises adjacent to grading, packing, cooler, and storage rooms must be properly graded and well drained to prevent conditions that may constitute a source of odors or propagate insects or rodents.

(3) Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.

(4) Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and conduct grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.

(5) The floors, walls, ceilings, partitions, and other parts of the grading and packing rooms including benches and platforms shall be constructed of materials that are readily cleanable, maintained in a sanitary condition, and impervious to moisture in areas exposed to cleaning solutions or moist conditions. The floors shall be constructed as to provide proper drainage.

(6) Adequate toilet accommodations which are conveniently located and separated from the grading and packing rooms are to be provided. Handwashing facilities shall be provided with hot and cold running water, an acceptable handwashing detergent, and a sanitary method for drying hands. Toilet rooms shall be ventilated to the outside of the building and be maintained in a clean and sanitary condition. Signs shall be posted in the toilet rooms instructing employees to wash their hands before returning to work. In new or remodeled construction, toilet rooms shall be

located in areas that do not open directly into processing rooms.

(7) A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.

(8) Adequate packing and packaging storage areas are to be provided that protect packaging materials and are dry and maintained in a clean and sanitary condition.

(c) *Grading and packing room requirements.* (1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs. There shall be no other light source or reflection of light that interfere with, or prohibit the accurate quality determination of eggs in the grading or candling areas.

(2) The grading and candling equipment shall provide adequate light to facilitate quality determinations. When needed, other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.

(3) The grading and candling equipment must be sanitarily designed and constructed to facilitate cleaning. Such equipment shall be kept reasonably clean during grading and packing operations and be thoroughly cleaned at the end of each operating day.

(4) Egg weighing equipment shall be constructed of materials to permit cleaning; operated in a clean, sanitary manner; and shall be capable of ready adjustment.

(5) Adequate ventilation, heating, and cooling shall be provided where needed.

(d) *Cooler room requirements.* (1) Cooler rooms holding shell eggs that are identified with a consumer grade shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C) and equipped with humidifying equipment capable of maintaining a relative humidity which will minimize shrinkage.

(2) Accurate thermometers and hygrometers shall be provided for monitoring cooler room temperatures and relative humidity.

(3) Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

(e) *Shell egg protecting operations.* (1) Shell egg protecting (oil application) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.

(2) Component equipment within the shell egg protecting system, including holding tanks and containers, must be sanitarily designed and maintained in a clean and sanitary manner, and the application equipment must provide an adequate amount of oil for shell coverage of the volume of eggs processed.

(3) Eggs with excess moisture on the shell shall not be shell protected.

(4) Oil having any off odor, or that is obviously contaminated, shall not be used in shell egg protection operations. Oil is to be filtered prior to application.

(5) The component equipment of the application system shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed.

(6) Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.

(f) *Shell egg cleaning operations.* (1) Shell egg washing equipment must be sanitarily designed, maintained in a clean and sanitary manner, and thoroughly cleaned at the end of each operating day.

(2) Shell egg drying equipment must be sanitarily designed and maintained in a clean and sanitary manner. Air used for drying purposes must be filtered. These filters shall be cleaned or replaced as needed to maintain a sanitary process.

(3) The temperature of the wash water shall be maintained at 90 °F (32.2 °C) or higher, and shall be at least 20 °F (6.7 °C) warmer than the internal temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle. Accurate thermometers shall be provided for monitoring wash water temperatures.

(4) Approved cleaning compounds shall be used in the wash water.

(5) Wash water shall be changed approximately every 4 hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.

(6) Replacement water shall be added continuously to the wash water of washers. Chlorine or quaternary sanitizing rinse water may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse water may not be used as part of the replacement water.

(7) Only potable water may be used to wash eggs. Each official plant shall submit certification to the national office stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds 2 parts per million, equipment shall be provided to reduce the iron content below the maximum allowed level. Frequency of testing for potability and iron content shall be determined by the Administrator. When the water source is changed, new tests are required.

(8) Waste water from the egg washing operation shall be piped directly to drains.

(9) The washing, rinsing, and drying operations shall be continuous and shall be completed as rapidly as possible to maximize conservation of the egg's quality and to prevent sweating of eggs. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.

(10) Prewetting shell eggs prior to washing may be accomplished by spraying a continuous flow of water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this section.

(11) Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water. The spray-rinse water shall contain a sanitizer that has been determined acceptable for the intended use by the national supervisor and of not less than 100 p/m nor more than 200 p/m of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the national supervisor.

(12) Test kits shall be provided and used to determine the strength of the sanitizing solution.

(13) During non-processing periods, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat that may diminish the quality of the egg.

(14) Washed eggs shall be reasonably dry before packaging and packing.

(15) Steam, vapors, or odors originating from the washing and rinsing operation shall be continuously and directly exhausted to the outside of the building.

(g) *Requirements for eggs officially identified with a grademark.* (1) Shell eggs that are officially identified with a grademark shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging.

(2) Eggs that are to be officially identified with the grademark shall be packed only in new or good used packing material and new packaging materials that are clean, free of mold,

mustiness and off odors, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution. When packed in other than fiber packing material, the containers must be of sound construction and maintained in a reasonably clean manner.

(h) *Use of approved chemicals and compounds.* (1) All egg washing and equipment cleaning compounds, defoamers, destainers, sanitizers, inks, oils, lubricants, or any other compound that comes into contact with the shell eggs shall be approved by the national supervisor for their specified use and handled in accordance with the manufacturer's instructions.

(2) All pesticides, insecticides, and rodenticides shall be approved for their specified use and handled in accordance with the manufacturer's instructions.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27906 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–045–2]

Citrus Canker; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the citrus canker regulations by updating the list of areas in the State of Florida quarantined because of citrus canker. The interim rule was necessary to prevent the spread of citrus canker into noninfested areas of the United States and to relieve restrictions that were no longer warranted.

EFFECTIVE DATE: The interim rule became effective on September 14, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Assistant Staff Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1236, (301) 734–7228.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on September 14, 2004 (69 FR 55315–55320, Docket No. 04–045–1), we amended the regulations in ''subpart—Citrus Canker'' (7 CFR 301.75 through 301.75–16) by updating the list in § 301.75–4 of areas in the State of Florida quarantined because of citrus canker. Specifically, to reflect the detection of citrus canker in an area adjacent to but outside of one current quarantined area in Florida, as well as in eight additional counties, we expanded the boundaries of one existing quarantined area and added several new areas to the list of quarantined areas. We also removed portions of three counties from the list of quarantined areas because regular surveys showed them to have been free of citrus canker for at least 2 years. These actions were necessary to prevent the spread of citrus canker into noninfested areas of the United States and to relieve restrictions that were no longer warranted.

Comments on the interim rule were required to be received on or before November 15, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 55315–55320 on September 14, 2004.

Done in Washington, DC, this 14th day of December, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–27878 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 04–120–1]

Delegation of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document delegates the authority given to the Administrator of the Animal and Plant Health Inspection Service to administer section 101(k) of the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988, more commonly known as the Act of December 22, 1987. Authority is delegated from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator of Wildlife Services. This delegation has already been made, however it is not reflected in the Code of Federal Regulations. Therefore, this document corrects that oversight.

EFFECTIVE DATE: December 21, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Sinclair, Staff Officer, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1231; (301) 734–7921.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2000, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (65 FR 1298–1302, Docket No. 97–025–1) that revised the statement of organization, functions, and delegations of authority of APHIS in 7 CFR part 371 to reflect changes in internal APHIS organization. The rule included delegations of authority from the Administrator of APHIS to the Deputy Administrator of Wildlife Services. However, we inadvertently omitted the delegation of authority from the Administrator to the Deputy Administrator of Wildlife Services for section 101(k) of the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988, also known as the Act of December 22, 1987. This delegation of authority had already been made, however it is not reflected in the Code of Federal Regulations. Therefore we are amending 7 CFR 371.6(b)(2) to correct this oversight.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive

Order 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ Accordingly, 7 CFR part 371 is amended as follows:

PART 371—ORGANIZATIONS, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. In § 371.6, paragraph (b)(2) is revised to read as follows:

§ 371.6 Wildlife Services.

* * * * *

(b) * * *

(2) Providing direction and coordination for programs authorized by the Act of March 2, 1931 (7 U.S.C. 426 and 426b, as amended) and the Act of December 22, 1987 (7 U.S.C. 426c).

* * * * *

Done in Washington, DC, this 14th day of December, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–27879 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV04–920–2 FIR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Kiwifruit Administrative Committee (committee) for the 2004–05 and subsequent fiscal periods from $0.045 per 22-pound volume-fill container or container equivalent to $0.002 per pound of kiwifruit. The committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning on August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that decreased the assessment rate established for the committee for the 2004–05 and subsequent fiscal periods from $0.045 per 22-pound, volume-fill container or container equivalent to $0.002 per pound of kiwifruit. The California kiwifruit marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers of California kiwifruit. They are familiar with the committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent fiscal periods, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on July 15, 2004, and unanimously recommended 2004–05 fiscal period expenditures of $91,839 and an assessment rate of $0.002 per pound of kiwifruit. In comparison, last fiscal period's budgeted expenditures were $88,659. The assessment rate of $0.002 per pound of kiwifruit is

$0.000045 per pound lower than the rate previously in effect and is based upon a per-pound unit rather than upon a 22-pound, volume-fill container or container equivalent.

The committee unanimously recommended decreasing the assessment rate slightly because the 2004–05 fiscal period kiwifruit crop is expected to be 8,550,000 pounds larger than the 2003–04 crop of 41,850,000 pounds. Revenue from assessments, along with other revenue from interest income and reserve carryover funds, should allow the committee to meet its expenses. The reserve at the end of the fiscal period should be about $30,686, which is within the maximum amount permitted under the marketing order.

The following table compares major budget expenditures recommended by the committee for the 2003–04 and 2004–05 fiscal periods:

Budget expense categories	2003–04	2004–05
Administrative Staff & Field Salaries	$57,600	$61,000
Travel	7,200	6,500
Office Costs/Annual Audit	14,075	14,555
Vehicle Expense Account	9,784	9,784

The assessment rate recommended by the committee was derived by the following formula: The anticipated 2004–05 fiscal period expenses ($91,839) minus the 2003–04 fiscal period carry forward ($21,725), plus the 2005–06 fiscal period anticipated reserve ($30,686), divided by the total estimated 2004–05 fiscal period shipments (50,400,000 pounds of kiwifruit). This results in an assessment rate of $0.002 per-pound. This rate should provide sufficient funds in combination with reserve funds to meet the anticipated expenses of $91,839 and result in a reserve of $30,686 in July 2005, which is acceptable to the committee. This reserve is also within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2004–05 fiscal period budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 270 producers of kiwifruit in the production area and approximately 45 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and defines small agricultural service firms as those whose annual receipts are less than $5,000,000.

None of the 45 handlers subject to regulation have annual kiwifruit sales of $5,000,000. In addition, only six producers have annual sales of at least $750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent fiscal periods from $0.045 per 22-pound, volume-fill container or container equivalent to $0.002 per pound of kiwifruit. The committee unanimously recommended 2004–05 fiscal period expenditures of $91,839 and an assessment rate of $0.002 per pound of kiwifruit. The assessment rate of $0.002 per pound of kiwifruit is $0.000045 lower than the rate during the 2003–04 fiscal period, and is based upon a per-pound assessable unit rather than upon a 22-pound container or container equivalent. The quantity of assessable kiwifruit for the 2004–05 fiscal period is estimated to be 50,400,000 pounds of kiwifruit. Thus, the $0.002 per-pound rate should provide $100,800 in assessment income and be adequate to meet this fiscal period's expenses.

The following table compares major budget expenditures recommended by the committee for the 2003–04 and 2004–05 fiscal periods:

Budget expense categories	2003–04	2004–05
Administrative Staff & Field Salaries	$57,600	$61,000
Travel	7,200	6,500
Office Costs/Annual Audit	14,075	14,555
Vehicle Expense Account	9,784	9,784

The committee reviewed and unanimously recommended 2004–05 fiscal period expenditures of $91,839, which included increases in salaries and office/annual audit costs, and a decrease in travel expenses. Prior to arriving at this budget, the committee considered alternative expenditure levels and varying crop sizes, but ultimately decided that the recommended levels were reasonable to properly administer the order.

The assessment rate recommended by the committee was derived by the following formula: The anticipated 2004–05 fiscal period expenses ($91,839) minus the 2003–04 fiscal period carry forward ($21,725), plus the 2005–06 fiscal period anticipated reserve ($30,686), divided by the total estimated 2004–05 fiscal period shipments (50,400,000 pounds of kiwifruit). This results in an assessment rate of $0.002 per-pound. This rate should provide sufficient funds in combination with reserve funds to meet the anticipated expenses of $91,839 and result in a reserve of $30,686 in July 2005, which is acceptable to the committee. This reserve is also within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

A review of historical information and preliminary information pertaining to the 2004–05 fiscal period indicates that the grower price could range between $9.50 and $13.00 per pound of kiwifruit. Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total grower revenue could range between 0.015 and 0.021 percent.

This action continues in effect the action that decreased the assessment

obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California kiwifruit industry, and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the July 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on September 16, 2004 (69 FR 55733). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on November 15, 2004, and no comments were received.

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

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

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 920 which was published at 69 FR 55733 on September 16, 2004, is adopted as a final rule without change.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27908 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 958 and 980

[Docket No. FV04–958–1 FIR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Relaxation of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onion varieties, and updates the regulatory text concerning certain reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in Idaho and Eastern Oregon and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule also continues in effect the action that relaxes the requirements for pearl and cipolline onions under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. Specifically, this rule continues in effect the action that changes the definition of pearl onions to mean onions 2 inches in diameter or less, establishes a relaxed minimum grade of U.S. No. 2 and relaxed minimum diameter of 1–1/2 inches for cipolline onions, and adds clarification and specificity to the reporting requirements for onions handled for peeling, chopping, or slicing. The changes will facilitate the marketing of onions handled under the marketing order, improve producer returns, and bring the section 8e import regulation into conformity with the marketing order.

DATES: Effective Date: January 20, 2005.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

USDA is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the action that relaxes handling regulations for pearl and cipolline onions produced in certain designated counties in Idaho, and Malheur County Oregon, by redefining pearl onions to mean onions 2 inches in diameter or less, and by establishing a relaxed minimum grade of U.S. No. 2 and a relaxed minimum diameter of 1½ inches for cipolline onion varieties. As provided under section 8e of the Act, these changes continue in effect the actions that also apply to all imported pearl and cipolline onions. This rule also continues in effect the action that adds clarification and specificity to the reporting requirements by updating § 958.328(d) for onions handled for peeling, chopping, or slicing to reflect current form provisions. These changes were unanimously recommended by the Committee on April 1, 2004, and are intended to facilitate the marketing of Idaho-Eastern Oregon onions and improve producer returns.

Sections 958.51 and 958.52 of the order authorize the Committee to recommend, and the USDA to issue, grade, size, quality, pack, and container regulations for any variety or varieties of onions grown in the production area. Section 958.53 authorizes the issuance of special regulations to facilitate the handling of pearl onions as well as other special purpose shipments. Section 958.65 authorizes the Committee to collect information from handlers. Regulations specific to the handling of onions produced in the regulated production area are contained in § 958.328 of the order's handling regulations, whereas relevant import regulations are contained in § 980.117 and § 980.501 of the vegetable import regulations.

Pearl onions and cipolline onions are small, specialty onions with end uses in both the fresh market (raw and cooked) and processed market. Although there are relatively few pearl onions and cipolline onions produced in the Northwest, increased producer interest in both types of onions, as well as changes in customer preferences, encouraged this Committee recommendation.

Pearl onions are defined, in part, in both the order and the import regulations as onions that are produced using specific cultural practices that limit growth and are inspected and certified as measuring no larger than the maximum designated size. Factors that can limit growth, and subsequently final bulb size, include the variety, plant density, depth planted, photoperiod, and temperature. Pearl onions are mild flavored white, red, or yellow skinned onions generally ranging in size from about ¾ inch to less than 2 inches in diameter.

Although pearl onions must be inspected and certified as measuring no larger than the maximum size designated under the order, they have been exempt from the minimum grade, size, and maturity requirements of the order since 1985. In order to be eligible for this exemption, the onions must be no greater than the stated maximum size limit. Although exempt from the grade, size, and maturity requirements, shipments of pearl onions are subject to administrative assessments.

Due to previous changes in handling, marketing, and buyer preferences, the defined maximum diameter of pearl onions was changed from 1½ inches to 1¾ inches in 1990 (55 FR 27825). Similarly, due to ongoing changes in handling, marketing, and buyer preferences, this rule continues in effect the action that further relaxes the size requirements by increasing the defined maximum diameter of pearl onions to 2 inches.

The pearl onion market is a minor segment of the onion market served by the Idaho-Eastern Oregon production area. As such, the Committee continues to believe that pearl onions do not compete directly with most of the onions produced in this area and that the current exemption from size, grade, and maturity requirements should continue.

Due to changing dynamics in the cultural and handling practices in this region, as well as buyer and consumer preferences, this relaxation in requirements will help facilitate the efficient movement of pearl onions into fresh market channels and may also enhance producer returns.

Cipolline onions—also known as Borettana onions—are traditional Italian onions that are relatively small and button shaped, and include white, red, and yellow varieties. As noted earlier, cipolline (pronounced chip-ah-LEE-nee) onions have constituted a very small percentage of the onions produced and marketed in the order's regulated production area in the past. However, due to an increase in cipolline onion production, and a growing consumer interest in this specialty onion, the order's grade and size requirements were beginning to adversely affect the handling and marketing of cipolline onions.

Under the order, white, red, and yellow onion varieties handled for the fresh market have varying minimum grade and size requirements. Specifically, white varieties must meet a minimum grade of U.S. No. 1, 1 inch minimum to 2 inches maximum or at least 1½ inches minimum, whereas red varieties must meet a minimum grade of U.S. No. 2 and a minimum diameter of 1½ inches. The most prevalent onions packed in the Idaho-Eastern Oregon production area, yellow onion varieties, must meet a minimum grade of U.S. No. 2 and measure 3 inches or larger in diameter, or, if packed to U.S. No. 1 grade, they may have a minimum measurement of 1¾ inches in diameter. Prior to this change, cipolline onions were handled, graded, and inspected in accordance with the different order requirements for white, red, and yellow onion varieties.

Cipolline onions, however, range in size from about 1 inch in diameter to about 3 inches in diameter, with prevalence found in the 2-inch to 3-inch sizes. Since most of the cipolline onions produced in this area are yellow, U.S. No. 2 grade cipolline onions would have difficulty meeting the three-inch minimum size requirement. Following a review of the cultural practices, supply situation, and demand characteristics for cipolline onions, the Committee determined that the marketing of all cipolline onion varieties would be enhanced if handlers were held to a minimum grade of U.S. No. 2 and a minimum size of 1½ inches in diameter—the same minimum requirements for all Idaho-Eastern Oregon red varieties.

This rule, by establishing a minimum grade and size for all cipolline onion varieties distinct from the prevalent white, red, and yellow varieties, will help ensure that marketable cipolline onions meet the minimum requirements of the order. While the requirements in place prior to this action allowed for the shipment of white cipolline onions that

graded U.S. No. 1, 1-inch minimum to 2-inches maximum, no such shipments were ever made from the production area. Therefore, this change in the minimum grade and size requirements is not expected to impact the shipment of white cipolline onions.

As mentioned earlier, section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions produced in South Texas, since the marketing orders were established. The import regulations specify that import requirements for onions are to be based on the seasonal categories of onions produced in both marketing order areas. In that regard, imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March 9 and the South Texas onion marketing order during the period March 10 through June 4 of each season. Pearl and cipolline onions are not currently produced in South Texas. However, they are produced and marketed in limited quantities through out the year under the Idaho-Eastern Oregon onion marketing order. Therefore, the requirements for imported pearl and cipolline onions should be based upon the requirements established under Marketing Order No. 958 for the entire year.

As a consequence, this action continues in effect changes to § 980.117(a)(1) and (2) and (b)(1) of the onion import regulations by determining that imports of pearl and cipolline onions during the entire year are in most direct competition with the marketing of onions produced under Marketing Order No. 958 and changes to § 980.117(h) and (i) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to 2 inches or less in diameter. Accordingly, all cipolline onions imported must be U.S. No. 2 grade or better and measure 1½ inches or more in diameter, and pearl onions cannot be larger than 2 inches in diameter.

This rule also continues in effect the action that clarifies certain handler reporting requirements. Under the handling regulations, onions that are inspected and certified as meeting the grade, size, maturity, and pack requirements of the order and are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection. Section 958.328(d) provides reporting procedures for the handling of such previously inspected onions for peeling, chopping, or slicing.

The Committee uses Form FV–37, Rehandling of Onions Report, to collect information from handlers specific to onions handled under this section. These reporting requirements are in place primarily to ensure handler compliance with the order's provisions. This rule continues in effect the action that adds clarification and specificity to the regulations by updating § 958.328(d) to reflect current Form FV–37 provisions. The change is expected to minimize handler errors in completing the form and help ensure timely submission of the completed form to the Committee.

This form has been approved previously by the Office of Management and Budget (OMB) under OMB Number 0581–0178, Vegetable and Specialty Crops. This action will not impact the information collection burden hours currently approved by OMB for this form.

Final Regulatory Flexibility Analysis

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

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

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 42 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 190 onion producers in the regulated area. In addition, based on the most recent information available, approximately 472 importers of onions are subject to import regulations and may be affected by this rule. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on its assessment records, the Committee estimates that about 39 of the 42 handlers ship less than $5,000,000 worth of onions on an annual basis. In addition, based on the acreage (20,600), production (12,000,000 cwt), and total producer revenue ($130,768,000) reported by the National Agricultural Statistics Service for 2003, and the current number of onion producers (190), the average annual gross producer revenue is approximately $688,252. Thus, the majority of the onion handlers and the onion producers in this industry may be classified as small entities. Although it is not known how many importers of onions may be classified as small entities, we believe that many of the 472 importers can be classified as such. There are two firms involved in altering onions under the order and both firms may be classified as small entities.

This rule continues in effect the action that relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onions, and clarifies certain reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. Authority for this action is contained in §§ 958.51, 958.52, 958.53, and 958.65 of the order. This rule—unanimously recommended by the Committee at its April 1, 2004, meeting—continues in effect the action that changes § 958.328(h) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers (as defined in the U.S. Standards for Grades of Onions), and that have been inspected and certified as measuring 2 inches in diameter or less. In addition, this rule continues in effect the action that changes § 958.328(a)(2) by adding cipolline onions to the minimum grade and size requirements established for red onion varieties: U.S. No. 2 grade or better and 1½ inch diameter or larger.

Under authority in section 8e of the Act, this rule also continues in effect the action that changes § 980.117(a)(1) and

(2), and (b)(1), of the onion import regulations by determining that imports of pearl and cipolline onions are in most direct competition during the entire year with the marketing of onions produced under Marketing Order No. 958 and changes § 980.117(h) and (i) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to 2 inches in diameter or less. Although not specifically referenced in the text of § 980.117, this rule also continues in effect the action that relaxes the minimum grade and size for imported cipolline onions to U.S. No. 2 grade and 1½ inches in diameter.

Finally, this rule continues in effect the action that updates § 958.328(d) to reflect the current form used for onions handled for peeling, chopping, or slicing. This action is intended to facilitate the handling and marketing of pearl and cipolline onions, increase producer returns, and help minimize errors in completing Form FV–37 concerning the handling of onions for peeling, chopping, or slicing, and to help ensure timely submission of the form to the Committee.

According to the Committee, there is currently one producer and one handler of pearl and cipolline onions in the regulated production area, and, as such, statistics relating to the production and marketing of pearl and cipolline onions in the Idaho-Eastern Oregon onion production area cannot be made available. The quantity of such specialty onions, however, would be minor in relation to the prevalent large, globular shaped Spanish-type onion produced in the production area. Regarding pearl and cipolline onions produced elsewhere in the United States or imported into the United States: statistical information is available grouped by dry bulb type onions, green onions, or onion sets and is generally unavailable by variety, size, or color. However, the U.S. Department of Commerce does track the quantity of pearl onions imported into the United States with a maximum diameter of .39 inches. In 2003, for example, approximately 211 hundredweight of pearl onions (less than or equal to .39 inches in diameter) were imported—in diminishing order—from Chile, Spain, China, Mexico, and India. In comparison, most onions imported into the U.S. are produced in Mexico, Canada, Peru, and Chile. Currently, there are no government statistics on the domestic production or importation of cipolline onions.

Regarding the impact of this rule on affected entities, relaxing the size requirement for pearl onions and the grade and size requirement for cipolline onions is expected to benefit handlers, importers, and producers. With the change in the definition of pearl onions to include onions as large as 2 inches in diameter, a potentially greater quantity of onions will pass inspection and thus be certified under the order's pearl onion exemption provisions. Similarly, by relaxing the minimum grade and size requirements for cipolline onions, a greater quantity of these onions should meet the order's handling regulations. This could translate into an increased market for cipolline onions and greater returns for handlers, importers, and producers. While the requirements in place prior to this action allowed for the shipment of white cipolline onions that graded U.S. No. 1, 1-inch minimum to 2 inches maximum, no such shipments were ever made. Therefore, this action is not expected to impact the shipment of white cipolline onions.

The clarification of reporting requirements for peeled, chopped, and sliced onions will have the tangible effect of providing more clearly understood instructions to handlers who are required to complete Form FV–37.

The Committee considered several alternatives to the relaxation in handling regulations for pearl and cipolline onions. The Committee initiated this action due to a request from the Idaho-Eastern Oregon onion industry's single pearl and cipolline onion producer and handler for an all-inclusive exemption from the requirements of the order. A special subcommittee was formed to study the request. The initial request was an exemption for an entire specialty product line, which included onion sets, pearl onions, boiler onions, prepack onions, cipolline onions, and shallots. The requester's main contention with the order is that none of his onions fit the profile of the Idaho-Eastern Oregon onion industry's foremost product, the large, globular shaped and mild Spanish-type onion. In addition, the requester was of the view that the Committee's promotion efforts—a major budgetary item for the Committee—does not benefit him as a producer and marketer of the small specialty onions. The requester also stated that the cost to him in complying with the order—in administrative assessments and inspection fees—is too high when considering his benefits from the order.

The subcommittee noted that onion sets and shallots do not need to be considered for further exemptions since neither is regulated under the marketing order. In addition, the subcommittee determined that boiler and prepacker size onions should not be exempt from the handling regulations since both are produced throughout the regulated production area. Various members of the subcommittee were of the view that the marketing of out-of-grade and off-size boiler and prepacker onions would have a negative impact on the marketing of all Idaho-Eastern Oregon onions.

Further, as noted earlier in this document, pearl onions have been exempt from the minimum grade, size, and maturity requirements of § 958.328 for several years. The subcommittee determined that an increase in the maximum size for pearl onions would facilitate the handling and marketing of these onions. The subcommittee considered increasing the maximum size under the pearl onion definition from 1⅞ inches to as much as 2¾ inches in diameter. This was rejected, however, because this would permit handlers to ship these onions exempt from the quality requirements in competition with larger sized onions subject to such requirements. The subcommittee also rejected consideration of an exemption from the current assessment and inspection requirements for pearl onions as being detrimental to the program. Pearl onions are inspected under the order to assure that they do not exceed the maximum diameter permitted.

Finally, the subcommittee considered various exemption and regulatory options in regard to cipolline onions. A complete exemption from the order was rejected since the subcommittee considered the cipolline onions as being a competitive product to the prevalent onion varieties produced and marketed under the order. Consideration was also given to establishing a different regulatory scheme for the county in which the cipolline onions are produced. This was not considered a viable option due to administrative concerns and the fact cipolline onions can be produced anywhere within the production area.

The Committee, based on the subcommittee's consideration of the issue, determined that pearl and cipolline onions are promoted through the order's generic promotion efforts since a major component of these efforts are coupled to the Idaho-Eastern Oregon onion logo. In this regard, the Committee feels that all handlers within the regulated production area benefit from the order.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and

forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 1, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, as indicated earlier, the subcommittee appointed to consider this matter met on February 25, 2004, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on September 22, 2004. Copies of the rule were made available by the Committee's staff to all producers, handlers, and interested persons. In addition, the rule was made available though the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended November 22, 2004. Two comments were received during that period. Neither comment addressed the substance of the interim final rule; therefore, no changes are made as a result of these comments.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 56667) will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the finalization of this rule.

List of Subjects

7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

PART 980—VEGETABLES; IMPORT REGULATIONS

■ Accordingly, the interim final rule amending 7 CFR parts 958 and 980 which was published at 69 FR 56667 on September 22, 2004, is adopted as a final rule without change.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27909 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV05–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2004–2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final free and restricted percentages for domestic inshell hazelnuts for the 2004–2005 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 6.4921 and 93.5079 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in outlets approved by the Board (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* December 22, 2004. This interim final rule applies to all 2004–2005 marketing year restricted hazelnuts until they are properly disposed of in accordance with marketing order requirements. Comments received by February 22, 2005 will be considered prior to issuance of a final rule.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2004–2005 marketing year (July 1, 2004, through June 30, 2005). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. At the same time, the Board computes and announces preliminary free and restricted percentages for that marketing year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts. The Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase. The Board may also modify the inshell trade demand to account for abnormalities due to crop or marketing conditions. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

Volume regulation under the order utilizes free and restricted percentages to allocate available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

On August 24, 2004, the National Agricultural Statistics Service (NASS) released an estimate of 2004 hazelnut production for the Oregon and Washington area at 44,000 dry orchard-run tons. On August 26, 2004, the Board met and estimated total available supply for the 2004 crop year at 44,954 tons. The Board arrived at this estimate by using the crop estimate compiled by NASS (44,000 tons) and then adjusting that estimate to account for disappearance and carryin. The order requires the Board to reduce the estimate by the average disappearance over the preceding three years (1,584 tons) and to increase it by the amount of undeclared carryin from previous years' production (2,538 tons.)

Disappearance is the difference between the estimated orchard-run production and the actual supply of merchantable product available for sale by handlers. Disappearance can consist of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), (3) product used on the farm, sold locally, or otherwise disposed of by producers, and (4) statistical error in the orchard-run production estimate.

The Board computed the adjusted inshell trade demand of 2,064 tons by taking the average of the past three years' sales (2,952 tons) and reducing it by the declared carry-in from last year's crop (888 tons). Declared carry-in is product regulated under the order during a preceding marketing year but held in inventory for future sale. Undeclared carry-in is product that was produced in a previous marketing year but was not subject to regulation at that time. Undeclared carry-in is subject to regulation under the order and is accounted for as such by the Board.

The Board computed and announced preliminary free and restricted percentages of 3.6726 percent and 96.3274 percent, respectively, at its August 26, 2004, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,064 tons × 80 percent/44,954 tons = 3.6726 percent). The preliminary free percentage thus initially released 1,651 tons of hazelnuts from the 2004 supply for domestic inshell use, and the preliminary restricted percentage withheld 43,303 tons for the export and shelled (kernel) markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.,* desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 3, 2004, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The NASS crop production estimate was 44,000 tons. However, based upon industry information, the Board reduced the estimate to 37,425 tons. The Board also decided that market conditions were such that the immediate release of an additional 15 percent for desirable carryout would not adversely affect the 2004–2005 domestic inshell market. No interim final free and restricted percentages were recommended. The Board recommended final free and restricted percentages of 6.4921 and 93.5079 percent, respectively. The final free percentage releases 2,507 tons of inshell hazelnuts from the 2004 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (which is lower than its initial estimate) and the following supply and

demand information for the 2004–2005 marketing year:

		Tons
Total Available Supply:		
(1) Production forecast (crop estimate)		37,425
(2) Less disappearance (three year average; 3.60 percent of Item 1)		1,347
(3) Merchantable production (Item 1 minus Item 2)		36,078
(4) Plus undeclared carryin as of July 1, 2004 (subject to regulation)		2,538
(5) Available supply subject to regulation (Item 3 plus Item 4)		38,616
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell hazelnuts (three prior years domestic sales)		2,952
(7) Less declared carryin as of July 1, 2004 (not subject to 2004–2005 regulation)		888
(8) Adjusted inshell trade demand (Item 6 minus Item 7)		2,064
(9) Desirable carryout on August 31, 2005 (15 percent of Item 6)		443
(10) Adjusted inshell trade demand plus desirable carryout (Item 8 plus Item 9)		2,507
	Free	Restricted
Percentages:		
(11) Final percentages (Item 10 divided by Item 5) × 100	6.4921	93.5079
(12) Final free tonnage (Item 10)	2,507	.....
(13) Final restricted tonnage (Item 5 minus Item 10)	.....	36,109

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 443 tons for desirable carryout. The total free supply for the 2004–2005 marketing year is 3,395 tons of hazelnuts, which is the sum of the final trade demand of 2,952 tons and the 443 ton desirable carryout. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Initial Regulatory Flexibility Analysis

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

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

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 18 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is $38,888. This is computed by dividing NASS figures for the average value of production for 2002 and 2003 ($29,166,000) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 89 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three main market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return for sales in the domestic inshell market. They receive less for product going to export inshell, and the least for kernels. Based on Board records of average shipments for 1994–2003, the percentage going to each of these markets was 11 percent (domestic inshell), 43 percent (export inshell), and 34 percent (kernels). Other minor market outlets in total make up the remaining 12 percent.

The inshell hazelnut market can be characterized as having limited and inelastic demand with a very short primary marketing period. On average, 78 percent of domestic inshell hazelnut shipments occur between October 1 and November 30, primarily to supply holiday nut demand. The inshell market is, therefore, prone to oversupply and low grower prices in the absence of supply restrictions. Volume regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. and to prevent oversupplied market conditions.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. Volume controls ensure that the domestic inshell market is fully supplied while protecting the market from the negative effects of oversupply.

The relatively high level of production in 2004 and the large carryin from previous year's production were key market factors leading to the relatively low 6.4921 percent final free percentage. Hazelnut production was originally estimated by NASS to be 44,000 tons, which would have made it the third largest crop on record. The Board revised the forecast to 37,425 tons after harvest was completed, a level that is still 22 percent above the 10 year average. Even if carryin had been zero, the amount of production that handlers typically ship into the domestic inshell market (*i.e.,* average trade acquisitions of 2,952 tons) equals only about 8.1 percent of supply (the 36,078 tons subject to regulation).

Although the domestic inshell market is a relatively small proportion of total sales (11 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Data from USDA's National Agricultural Statistics Service (NASS) show that total hazelnut production has varied widely over the 10-year period between 1994 and 2003, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year were 50 percent and 160 percent, respectively, of the 10-year average tonnage of 30,920. Grower price has not fluctuated to the extent of production. Prices in the lowest price year and the highest price year were 93 percent and 115 percent, respectively, of the 10-year average price of $898 per ton. The considerable lower variability of price versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower revenue to cost is useful in highlighting the impact on growers of recent product and price levels. A recent hazelnut production cost study from Oregon State University estimated cost-of-production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level only twice from 1994 to 2003. Average grower revenue was below typical costs in the other years. Without the stabilizing impact of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability and help moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2004–2005 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would tend to oversupply the inshell domestic market. The 2004–2005 hazelnut crop is larger than last year and much larger than expected. The unregulated release of 38,616 tons on the domestic inshell market would oversupply that small market and would cause producer returns to decrease, thereby disrupting the market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 4 percent of total U.S. production for other tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 79 percent of the kernels were marketed in the domestic market and 21 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a 10-year average of 5,255 tons out of total average exports of 14,048 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 5,526 tons, representing 24 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 70 percent of total exports of 23,319 tons in 2003. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 26, and November 3, 2004, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on the establishment of final free and restricted percentages for the 2004–2005 marketing year under the hazelnut marketing order. Any comments

received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2004–2005 marketing year began July 1, 2004, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new section 982.252 is added to read as follows:

[**Note:** This section will not be published in the annual Code of Federal Regulations.]

§ 982.252 Free and restricted percentages—2004–2005 marketing year.

The final free and restricted percentages for merchantable hazelnuts for the 2004–2005 marketing year shall be 6.4921 and 93.5079 percent, respectively.

Dated: December 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27907 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM294; Special Conditions No. 25–277–SC]

Special Conditions: Raytheon Aircraft Company Model MU–300 and MU–300–10 Airplanes and Model 400 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes modified by Beechjet TECH. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates installation of two Shadin ADC–6400 RVSM–capable air data computers that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 6, 2004. Comments must be received on or before January 20, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM294 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. NM294.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

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

Background

On July 19, 2004, Beechjet TECH, 4500 S. Garnett, Suite #600, Tulsa, Oklahoma 74146 applied for a supplemental type certificate (STC) to modify Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes. Model MU–300 is currently approved under Type Certificate No. A14SW and Models MU–300–10 and 400 are currently approved under Type Certificate No. A16SW. The Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes are small transport category airplanes powered by two turbojet

engines. They operate with a 2-pilot crew and can seat up to 9 passengers. The modification incorporates the installation of two Shadin ADC–6400 air data computers, with the capability for operating the airplane at a reduced vertical separation minimum (RVSM). The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Beechjet TECH must show that the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificates No. A16SW or A14SW, as applicable, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification bases for the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–40; §§ 25.1351(d), 25.1353(c)(5), and 25.1450 as amended by Amendment 25–41; §§ 25.29, 25.255, and 25.1353(c)(6) as amended by Amendment 25–42; § 25.361(b) as amended by Amendment 25–46; and 14 CFR part 36 as amended by Amendment 36–1 through 36–12.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should Beechjet TECH apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16SW or A14SW, as applicable, to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes modified by Beechjet TECH will incorporate two Shadin ADC–6400 RVSM-capable air data computers that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes modified by Beechjet TECH. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes modified by Beechjet TECH. Should Beechjet TECH apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16SW or A14SW, as applicable, to incorporate the same or similar novel or unusual design feature, these special conditions would apply to

that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes modified by Beechjet TECH. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Raytheon Aircraft Company Model MU–300 and MU–300–10 airplanes and Model 400 airplanes modified by Beechjet TECH.

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

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

Issued in Renton, Washington, on December 6, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27824 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18897; Airspace Docket No. 04–AAL–12]

Revision of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kotzebue, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in additional Class E surface area airspace at Kotzebue, AK.

EFFECTIVE DATE: 0901 UTC, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 10, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create additional Class E surface area airspace at Kotzebue, AK (69 FR 54758). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new Standard Instrument Approach Procedures for the Kotzebue Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway (RWY) 26, original, (2) RNAV (GPS) Y RWY 8, original. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 revises Class E airspace at Kotzebue, Alaska. This additional Class E airspace was created to accommodate aircraft executing two new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Kotzebue Airport, Kotzebue, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it revises Class E surface area sufficient in size to contain aircraft executing two new Standard Instrument Approach Procedures for the Kotzebue Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 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 area.

* * * * *

AAL AK E2 Kotzebue, AK—[Revised]

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N., long. 162°35′55″ W.)
Kotzebue VOR/DME
(Lat. 66°53′08″ N, long. 162°32′24″ W)
Hotham NDB
(Lat. 66°54′05″ N, long. 162°33′52″ W)

Within a 4.8-mile radius of the Ralph Wien Memorial Airport and within 2.6 miles each side of the 039° bearing from Hotham NDB extending from the 4.8 mile radius to 8.9 miles northeast of the airport and within 2.4 miles each side of the 091° radial from the Kotzebue VOR/DME extending from the 4.8-mile radius to 11.5 miles east of the airport and within 2.4 miles each side of the 278° radial from the KotzebueVOR/DME extending from the 4.8-mile radius to 10.2 miles west of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on December 10, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 04–27826 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18, 19 and 21

RIN 3038–AC08

Reporting Levels and Recordkeeping

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) has adopted several amendments to its contract market and large trader reporting rules (reporting rules). First, with regard to contract reporting levels, the Commission has raised existing levels for certain commodities, established a new default contract reporting level for broad-based securities indexes, and introduced additional reporting levels to address recent market developments. Second, the Commission has adopted rules to specify the manner in which a set of new transactions, such as exchanges of futures for swaps, are reported to the Commission. Third, the Commission has updated its reporting rules to acknowledge current data transmission practices, to foster innovative means of filing forms identifying the owners of accounts with reportable positions, and to eliminate the use of Form 103 for the submission of special call data. Finally, the Commission has adopted a number of clarifying and technical amendments.

DATES: Effective January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section (telephone 202–418–5209, e-mail *gmartinaitis@cftc.gov*), or Bruce Fekrat, Attorney, Office of the Director (telephone 202–418–5578, e-mail *bfekrat@cftc.gov*), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Large Trader Reporting Rules

A. Background

The Commission's reporting rules provide an important tool for market oversight and other surveillance activities. The rules governing this system, among other things, require futures commission merchants (FCMs), clearing members and foreign brokers (collectively reporting firms) to report position and identifying information of the largest futures and option traders, and require traders themselves to provide certain position and identifying information to the Commission. Reporting levels are set for futures and option contracts under the authority of sections 4c and 4i of the Commodity Exchange Act (CEA or Act) to ensure that the Commission receives adequate information to carry out its market surveillance programs.[1] These market surveillance programs are designed to detect and prevent price manipulation and market congestion on designated contract markets (DCMs), and to enforce speculative position limits pursuant to section 4a of the Act. The Commission's market surveillance programs also provide information on the overall hedging and speculative use of, and foreign participation in, the futures and option markets and other matters of public interest.[2] On May 12, 2004, the Commission published a notice of rulemaking for public comment proposing to amend its reporting rules.[3] With several minor exceptions, the Commission herein is adopting the amendments as proposed.

B. Raising Contract Reporting Levels for Certain Commodities

1. Amended Reporting Levels

Generally, the firm carrying a trader's reportable position files large trader reports.[4] The Commission has traditionally calibrated contract

[1] Section 4i of the Act requires the filing of such reports as the Commission may require when transactions or positions made or obtained on contract markets or derivatives transaction execution facilities equal or exceed Commission set levels. Section 4g of the Act requires each registrant, whether an FCM, introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer transactions or positions executed on any board of trade in the United States or elsewhere.

[2] Information collected through the large trader reporting system is also important to the Commission's financial surveillance efforts in furtherance of its responsibility to oversee the financial, as well as the economic, integrity of the markets. For example, the Division of Clearing and Intermediary Oversight uses various automated tools to combine position information with financial information routinely collected from FCMs to assess and analyze financial risks presented by large customer positions to both the firms carrying those positions and the respective clearing organizations.

[3] 69 FR 26333 (May 12, 2004).

[4] Specifically, parts 17 and 18 of the Commission's regulations require reports from firms and traders, respectively, when a trader holds a ''reportable position.'' *See* 17 CFR parts 17 and 18. A reportable position is any open contract position, as further defined in the rules, that at the close of the market on any business day equals or exceeds the quantity specified in Rule 15.03. *See* 17 CFR 15.00. The firms that carry accounts for traders holding reportable positions are required to identify those accounts on Form 102 and to report positions in the accounts to the Commission. The individual trader who holds or controls a reportable position, however, is required to report position and identifying information to the Commission only in response to a special call.

reporting levels to ensure that the aggregate of all positions reported to the Commission typically represents 70 to 90 percent of the open interest in any given contract. The Commission periodically reviews for each contract information concerning trading volume, open interest, the number and position sizes of individual traders relative to the reporting levels, and the Commission's surveillance experience with specific contracts, to determine if coverage of open interest is adequate for effective market surveillance. In this regard, the Commission is mindful of the burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the commodity futures and option markets. The Commission's most recent review of reporting levels indicates that the relative size of trading volume, open interest, and positions of traders enables the Commission to raise reporting levels as follows: (1) Milk, Class III from 25 to 50 contracts; (2) Soybeans from 100 to 150 contracts; (3) Wheat from 100 to 150 contracts; (4) Corn from 150 to 250 contracts; (5) Sugar No. 11 from 400 to 500 contracts; (6) Cotton from 50 to 100 contracts; (7) Natural Gas from 175 to 200 contracts; (8) Crude Oil, Sweet—No. 2 Heating Oil Crack Spread from 25 to 250 contracts; (9) Crude Oil, Sweet—Unleaded Gasoline Crack Spread from 25 to 150 contracts; (10) Unleaded Gasoline—No. 2 Heating Oil Spread Swap from 25 to 150 contracts; (11) 1-Month LIBOR from 300 to 600 contracts; (12) 30-Day Fed Funds from 300 to 600 contracts; (13) 3-Month Eurodollar Time Deposit Rates from 1,000 to 3,000 contracts; (14) TRAKRS from 25,000 to 50,000 contracts; (15) E-Mini S&P 500 Stock Price Index from 300 to 1,000 contracts [5]; (16) 2-Year U.S. Treasury Notes from 500 to 1,000 contracts; (17) 5-Year U.S. Treasury Notes from 800 to 2,000 contracts; (18) 10-Year U.S. Treasury Notes from 1,000 to 2,000 contracts; and (19) 30-Year U.S. Treasury Bonds from 1,000 to 1,500 contracts.

In response to the proposed rulemaking's request for public comment, U.S. Futures Exchange, L.L.C. (Eurex US), a Commission designated board of trade, recommended increasing the contract reporting level for all U.S. Treasury Notes and Bonds to the 5,000 contract range.[6] As stated in its comment letter, Eurex US based its recommendation on the amount of deliverable supply, increases in trading volume, and the average size of specific transactions.[7] The Commission carefully considered Eurex US's recommendation, but concluded that more modest increases in contract reporting levels better facilitate the Commission's obligation to rigorously surveil the market for U.S. Treasury Notes and Bonds.

2. The Impact of Raising Reporting Levels

The adjustments to reporting levels will decrease the number of daily position and identifying reports, such as Series '01 Reports and Forms 102, that reporting firms are currently required to file.[8] The number of Forms 40 filed by large traders will also decrease.[9] However, according to administrative experience and analysis performed by the Commission's surveillance staff, the percent of total market open interest reported through the large trader reporting system will remain at a level deemed sufficient for rigorous market surveillance.

Furthermore, not all reporting firms may elect to report under the Commission's higher, and therefore potentially less burdensome, reporting levels because exchanges also maintain large trader reporting systems that are similar in most respects to the Commission's system. The exchanges set their own reporting levels, which for particular contracts may vary from Commission set levels. When exchange reporting levels are set lower than those set by the Commission, firms may report to the Commission at the lower exchange set level, thereby saving any cost associated with reprogramming their reporting systems.[10] The Commission, however, only requires the filing of large trader reports for positions that equal or exceed its reporting levels.

C. Default Reporting Level for Broad-Based Securities Indexes

The general default reporting level for all positions, including positions in broad-based securities indexes, is currently 25 contracts. The Commission is adopting, as proposed, a new default reporting level of 200 contracts specifically for broad-based securities indexes. By adopting such a default reporting level, the following commodities will no longer be enumerated in Rule 15.03, and therefore, will be subject to the new default reporting level of 200 contracts: (1) S&P 400 Midcap Stock Index—currently 100 contracts; (2) Dow Jones Industrial Average Index—currently 100 contracts; (3) New York Stock Exchange Composite Index—currently 50 contracts; (4) Amex Major Market Index, Maxi—currently 100 contracts; (5) NASDAQ 100 Stock Index—currently 100 contracts; (6) Russell 2000 Stock Index—currently 100 contracts; (7) Value Line Average Index—currently 50 contracts; and (8) NIKKEI Stock Index—currently 100 contracts. The reporting level for the S&P 500 Stock Price Index and the Municipal Bond Index, however, will remain at 1,000 and 300 contracts, respectively.

D. Additional Contract Reporting Levels

To address recent market developments, the Commission is establishing enumerated reporting levels for three German federal government debt instruments, as well as a reporting level for products that are offered by HedgeStreet, Inc. (HedgeStreet), a new DCM. The reporting levels for the German debt instruments and the products offered by HedgeStreet are as follows: (1) 10-Year German Federal Government Debt—1,000 contracts; (2) 5-Year German Federal Government Debt—800 contracts; (3) 2-Year German Federal Government Debt—500 contracts; and (4) HedgeStreet Products—125,000 contracts.

The reporting level enumerated for HedgeStreet products is applicable to HedgeStreet contracts that pay a maximum of $10.00 if in the money upon expiration. In light of the relatively low value of these products, the Commission is adopting a reporting level of 125,000 contracts. Since the value of HedgeStreet products could result in the reporting of positions that

[5] Previously, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract were 1,000 and 300 contracts, respectively. As amended, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract will be the same. Accordingly, the Commission is deleting the separate reference to the E-Mini S&P 500 Stock Price Index in Rule 15.03. Subject to this single exception for the E-Mini S&P 500 Stock Price Index contract, the Commission's practice has been to apply the same reporting level to both e-mini and related full-size contracts.

[6] Letter from Satish Nandapurkar, CEO, U.S. Futures Exchange, L.L.C. to Jean A. Webb, Secretary of the Commission at 1 (June 10, 2004) (on file with the Commission).

[7] *Id.*

[8] A Series '01 Report itemizes the account number and certain positions, deliveries, and exchanges of futures associated with each account carrying a reportable position. *See* 17 CFR 17.00. The name, address, and occupation of the person or persons who own such accounts are separately identified on Form 102. *See* 17 CFR 17.01.

[9] Form 40 is a statement filed by a reporting trader on special call from the Commission. Reporting traders must list their name, address, telephone number, and principal occupation. Reporting traders are also required to disclose certain information relating to their business associations and their financial interest in, and control of, accounts that carry reportable positions. *See* 17 CFR part 18.

[10] *See* 62 FR 24026, 24028 n. 7 (May 2, 1997).

numerically are very large, and due to current limitations in the Commission's large trader record format, HedgeStreet positions are to be reported under part 17 of the Commission's regulations by rounding down to the nearest 1,000 contracts and then dividing by 1,000. For example, a position of 177,955 contracts would be rounded down to 177,000 contracts, divided by 1,000, and then reported as 177.[11]

As initially structured by the Commission, the proposed enumerated reporting level for HedgeStreet products applied only to European-style binary options that were derivatives of economic indexes and paid a fixed $10.00 when in the money upon expiration. The terms of the proposed reporting level were based upon the Commission's understanding that HedgeStreet contracts would initially have economic indexes as their underlying. However, in its comment letter on the proposed rulemaking, HedgeStreet requested that the Commission apply the 125,000 contract reporting level to HedgeStreet products that would not have economic indexes as their underlying.[12]

Because of the relatively low notional value of HedgeStreet products, the reporting levels otherwise applicable to such contracts, including the default reporting level of 25 contracts, may place an undue reporting burden on HedgeStreet and its members without substantially facilitating the Commission's objective of, and responsibility for, conducting meaningful market surveillance. The Commission, therefore, believes that a reporting level of 125,000 contracts for all HedgeStreet commodity futures and option contracts with a maximum payout of $10 appropriately apprises the Commission of significant positions and relieves unnecessary burdens on HedgeStreet and its members.[13]

II. Trades Involving the Exchange of Commodity Futures Contracts

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), extensively revising the CEA.[14] The CFMA facilitated the introduction of certain new transactions by the exchanges, including certain off-centralized-market trades such as exchanges of futures for swaps (EFS).[15] Currently, several exchanges have rules permitting EFSs and other types of off-centralized-market trades referred to as exchanges of futures for risk (EFR) and exchanges of futures for options (EFO).[16] However, parts 16 and 17 of the Commission's regulations previously required contract markets and reporting firms to separately account only for volume attributable to EFPs.[17]

In order to recognize the growing use of these off-centralized-market trades, the final rules require exchanges and reporting firms to report all trades involving the exchange of futures for a commodity or for a derivatives position in the same manner as they previously reported EFP transactions. Therefore, exchanges and reporting firms will group together all EFPs, EFSs, EFRs, EFOs or other exchanges of futures for a commodity or for a derivatives position permitted by exchange rules, and report the sum under the same category. This is an appropriate approach because all of these trades are similar in that they permit the exchange of a futures position for an off-exchange position. Block trades, however, will not be included in this total because they do not involve the exchange of a commodity futures contract for a commodity or for a derivatives position. Volume attributable to block trades shall be reported with other volume.

With regard to the reporting of exchanges of futures, one commenter, Rolfe and Nolan Systems, Inc., a recordkeeping and reporting service provider, requested that the Commission allow at least 90 days after the finalization of the reporting rules for FCMs to comply with the requirement to aggregate exchanges of futures.[18] The commenter indicated that compliance with the new requirement would compel certain programming modifications.[19] In the Commission's view, this request is reasonable. In order to permit ample time for persons with reporting obligations to implement any necessary programming modifications, the Commission will not institute any enforcement proceeding under parts 15 through 18, and part 21, for non-compliance with the adopted reporting requirements applicable to exchanges of futures other than EFPs until the expiration of 90 days from the date of publication of these rules in the **Federal Register**. During this interval, compliance with the rules applicable to exchanges of futures is voluntary, however, persons with reporting obligations must continue to comply with all reporting requirements that are applicable to EFPs.

III. Modernization of Rules Covering Data and Hard Copy Submissions

The Commission is adopting a series of rule amendments that are designed to update the reporting process in recognition of technological advancements. Parts 16 through 18, and part 21, previously required the submission of reports in hard copy form or through the dial-up transmission of data. The final rules amend these requirements to reflect the existing industry practice of using Internet data transmissions in place of dial-up transmissions and the use of exchange websites as a store of daily data in place of compiling information in hard copy form. The Commission, in addition to making certain other minor amendments that affect the reporting process, is also eliminating the use of Form 103 for the submission of special call data under part 18, and adopting final rules designed to foster innovation in the means reporting firms use to file Forms 102 as required by part 17.[20]

[11] *See* 17 CFR 17.00(g)(1).

[12] Letter from Michael Connor, President, HedgeStreet, Inc. to Jean A. Webb, Secretary of the Commission at 1 (June 8, 2004) (on file with the Commission).

[13] *See* Division of Market Oversight No-Action Letter to HedgeStreet, Inc. (July 26, 2004) (on file with the Commission).

[14] Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[15] For instance, section 5(b)(3)(B) of the Act provides that DCM rules may authorize ''an exchange of—(i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps * * *.'' 7 U.S.C. 7(b)(3)(B).

[16] An EFS, EFR, and EFO works similarly to a transaction involving the exchange of futures for physicals (EFP). EFPs allow market participants to exchange a position in a futures contract with a similar cash market position. EFSs allow market participants to exchange a position in a futures contract for a cash-settled swap position. EFRs allow market participants to exchange a position in a futures contract for an over-the-counter derivatives position. EFOs allow market participants to exchange a position in a futures contract for an off-exchange options position.

[17] In the notice of proposed rulemaking, the Commission referred to transactions involving the exchange of futures as ''exchanges of futures for a commodity or transaction other than a futures product.'' 69 FR 26335. The final rules, however, refer to such transactions as ''exchanges of futures for a commodity or for a derivatives position'' in order to capture a broader set of transactions and remain consistent with terminology used in another Commission notice of rulemaking. *See* 69 FR 39880 (July 1, 2004).

[18] Letter from John Munro, Senior Vice President of Product Design, Rolfe and Nolan Systems, Inc. to Jean A. Webb, Secretary of the Commission at 1 (June 1, 2004) (on file with the Commission).

[19] *Id.*

[20] Although generally supportive of the Commission's efforts to encourage electronic methods for publishing information and making regulatory filings, Eurex US commented that the Commission should adopt a consistent electronic protocol for the submission of data. Letter from Satish Nandapurkar, CEO, U.S. Futures Exchange, L.L.C. to Jean A. Webb, Secretary of the Commission at 2 (June 10, 2004) (on file with the Commission). As requested, the Commission will endeavor to adopt consistent and uniform electronic data submission procedures where appropriate. Nevertheless, the Commission believes that in order to lessen reporting and filing burdens

The rules contained within part 16 of the Commission's regulations require reports from contract markets. The final rules eliminate the requirement for filing daily hard copy clearing member reports and daily hard copy submissions of data on trading volume, exchanges of futures, open contracts, delivery notices, option deltas, prices, and critical dates. These reports will only be required in hard copy form upon the request of the Commission or its staff. Also, the Commission is replacing the requirement of providing printed forms of data on trading volume, exchanges of futures, open contracts, delivery notices, and option deltas to the news media and members of the public with a general requirement that such information be made readily available to such persons.

The Commission is also replacing explicit requirements in part 16 for the dial-up transmission of data with more general data transmission requirements. Finally, in light of advances in technology, the Commission is requiring the submission of clearing member reports and certain data regarding trading volume, open interest, prices and critical dates by 12 noon on the business day following the day to which the information pertains. Previously, such information was required to be submitted by 3 p.m. on the business day following the day to which the information pertained. The Commission believes that the information is currently being submitted within the adopted noon deadline.

In part 17, which governs reports submitted by reporting firms, the Commission is substituting specific requirements pertaining to the use of dial-up transmissions, submissions of '01 forms, and computer printouts with more general data transmission requirements. Furthermore, the Commission will permit reporting firms to authenticate Forms 102 by a means other than manually signing the form. The signature requirement necessitates the physical filing of Forms 102. Physically filing these forms remains one of the more costly aspects of large trader reporting for the industry. In order to foster innovative and cost effective means of fulfilling this reporting requirement, including the possibility of electronic filing, the Commission will accept alternative means of authentication. While a manual signature will remain the default method of authentication, the Commission will retain the authority to approve other means of authentication as new filing solutions become available and accepted by market participants.

In part 18, which governs reports filed by traders, the Commission is eliminating the use of Form 103 for data requested by the Commission on special call. The format of the submitted data will be per instruction contained in the call.[21] In addition, consistent with the newly adopted requirements for the daily submission of large trader data, the Commission will also require traders to identify exchanges of futures for commodities or for derivatives positions in response to such a call.

The Commission is also deleting Rule 18.02 which provides for the use of code numbers for the designation and identification of accounts. Rule 18.02 was relevant to a reporting structure that relied on the routine receipt of large trader reports directly from traders. The Commission has not assigned a code number under Rule 18.02 in many years and, if a request for such assignment is made in the future, the Commission can accommodate the request informally. Finally, the Commission is amending part 18 by deleting Rule 18.06 as the referenced technology is no longer is use.

In part 21, which governs special calls, the requirement for machine-readable information adhering to a specific record layout is deleted. The requirement for the information to be prepared in accordance with instructions in the call will remain. This matches current industry and Commission practice.

IV. Clarifying and Technical Amendments

The Commission has identified a number of other provisions of the reporting rules that either do not reflect current industry or Commission practice or otherwise should be corrected or updated. First, the Commission is amending Rule 15.00(b)(1)(ii) to clarify that options on physicals are included in the definition of reportable position.[22] Second, the Commission is amending Rule 17.00(a) to clarify that a reportable position in a commodity in a special account requires that all positions in that same commodity on the same exchange in the special account be reported.[23] Third, the Commission is amending Rule 17.04 to clarify that option positions are to be included in reports of omnibus accounts. Each of these clarifications is reflective of current industry and Commission practice.

The Commission is also amending Rules 16.00(b)(2) and 16.01(d)(2) to provide that the time by which the market reports required by those rules must be filed is governed by a particular time zone, unless otherwise specified by the Commission or its designee. The Commission specified eastern time for markets located in that time zone and central time for markets located elsewhere because Commission staff in Chicago and Kansas City assume surveillance duties for markets located outside of New York. The Commission is also adopting certain technical amendments to Rule 17.00(g). Specifically, it is removing the references to particular exchanges in subsection (2)(v) and making certain editorial changes in subsections (2)(vi) and (2)(xi). The Commission is also altering the requirement in Rule 17.01 regarding identification of special accounts to exchanges on Form 102.[24] Finally, the Commission is updating and correcting certain outdated references to the provisions of part 15 that appear in part 19.

V. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) requires the

on all exchanges and market participants, electronic data submission protocols must inherently incorporate a reasonable measure of procedural flexibility.

[21] This matches current industry and Commission practice. The Commission is also amending Rule 15.02 to remove Form 103 from the list of forms to be used in filing reports.

[22] Prior to 1997, the definition of a reportable position explicitly referenced options on physicals. 17 CFR 15.00(b)(2) (1996). When the Commission amended that definition in 1997, that reference was deleted. 62 FR 24026 (May 2, 1997). The Commission believes that this deletion was unintentional as no explanation was provided at the time. *Id.; see also* 61 FR 37409 (July 18, 1996). Furthermore, both the Commission and the industry have continued to include options on physicals in reports filed under parts 15 through 21. *See* 17 CFR 16.00(a), 16.01(a), 21.02a(b)(4)(vii). Accordingly, the Commission believes that it is appropriate at this time to amend the definition of reportable position to clarify that it includes options on physicals, both to correct what appears to have been an unintentional limitation of the definition in 1997 and to align the definition with current industry and Commission reporting practices.

[23] Part 17 was amended in 1997 to reflect this requirement. *See* 62 FR 24026, 24028 n. 7 (May 2, 1997). In practice, however, it appears that further clarification would be helpful.

[24] This change is consistent with earlier changes made to the Commission's rules and does not relieve reporting firms from their obligation to comply with any applicable exchange requirements regarding the submission of Forms 102 to the exchanges. *See* 62 FR 24026 (May 2, 1997).

Commission to ''consider the costs and benefits'' of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's notice of proposed rulemaking contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.[25] The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules. The Commission, however, received no comment letter that considered the costs and benefits of the proposed rules. The Commission has considered the costs and benefits of these rules in light of the specific areas of concern identified in section 15. The Commission has endeavored in these rules to impose the minimum requirements necessary to enable the Commission to perform its oversight functions, to carry out its mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse. After considering these factors, the Commission has determined to adopt the revisions to parts 15 through 19, and part 21, as set forth below.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that contract markets, futures commission merchants and large traders are not ''small entities'' for purposes of the RFA.[26] The requirements of the proposed amendments fall mainly on contract markets and FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable large positions. In addition, these amendments relieve regulatory burdens. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions taken herein will not have a significant economic impact on a substantial number of small entities.

C. The Paperwork Reduction Act

The revision of collections of information in these final rules have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), under control numbers 3038–0009 and 3038–0012. 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 control number. In the notice of proposed rulemaking, the Commission estimated the paperwork burden that would be imposed by the rules and sought comments on the estimates.[27] Only a single comment pertained tangentially to the collections of information requirements. Rolfe and Nolan Systems, Inc., a recordkeeping and reporting service provider, requested that the Commission allow at least 90 days for FCMs to comply with the requirement to aggregate exchanges of futures for reporting purposes.[28] The Commission has determined to grant that request.

1. Scope of the Collections of Information

Parts 15 through 21 of the Commission's regulations require reports from exchanges and large trader reports from clearing members, FCMs, foreign brokers, and traders. These rules are designed to provide the Commission with information to effectively conduct its market surveillance program, which includes the detection and prevention of price manipulation and enforcement of speculative position limits. The final rules give exchanges, reporting firms, and traders substantial flexibility in adopting technologically advanced techniques for data collection, retention, and submission.

Part 16 of the Commission's regulations requires reports from exchanges. The final rules eliminate the requirements for daily hard copy clearing member and market data reports to the Commission. Furthermore, the Commission has replaced explicit requirements for a dial-up form of data transmission with more general requirements for data transmission.

In part 17, which governs reports by reporting firms, the Commission has replaced specific requirements pertaining to the use of dial-up transmissions with more general data transmission requirements. In order to foster more innovative and cost efficient means for filing Forms 102, including the possibility of electronic filing, the Commission has adopted a final rule that facilitates the adoption of alternative means for authenticating Forms 102.

In part 18, which governs reports by traders, the Commission will no longer use Form 103 when seeking data via special call. The form of the data will now be per instruction contained in the call. In part 21, which governs special calls, the requirement for machine-readable information adhering to a specific record layout as contained in the rules has been eliminated. The requirement for the information to be prepared in accordance with instructions in the call remains.

2. Respondents and Estimated Reporting Burden

Twelve exchanges provide the data required under Rule 16.00 once on each of an estimated 220 business days per year. All twelve exchanges provide a set of information which includes daily options and futures market data showing open contracts, volume of trading, deliveries and exchanges of futures for physicals (EFPs) by clearing member firms associated with the exchange's derivatives clearing organization. The final rules require the reporting of all exchanges of futures. The burden associated with this reporting obligation is minimal. The final rules only require that exchanges aggregate all exchanges of futures and report them as a single sum without further itemization. The total burden in hours for the reporting of trading data by the exchanges is estimated at 879 hours.

The twelve exchanges also provide the market information required by Rule 16.01 for each of approximately 220 trading days per year. We have estimated that it takes the exchanges about 30 minutes per day to generate and transmit each data file. This results in an annual burden of approximately 1,760 hours. The total estimated annual burden for this collection of information has increased by 440 hours. The increase, however, is mainly attributable to an increase in the number of exchanges with market data reporting obligations.

[25] 69 FR at 26336.

[26] 47 FR 18618–21 (April 30, 1982).

[27] 69 FR 26333, 26337.

[28] Letter from John Munro, Senior Vice President of Product Design, Rolfe and Nolan Systems, Inc. to Jean A. Webb, Secretary of the Commission at 1 (June 1, 2004) (on file with the Commission).

Approximately 750 clearing members, FCMs, and foreign brokers are subject to routine reporting requirements. The final rules do not increase the aggregate burden hours required for such persons to comply with the routine reporting requirements. Under Rule 17.00, routine reports are filed only for accounts with futures and option positions that meet or exceed levels set by the Commission in Rule 15.03(b). It is estimated that this represents about 10 percent of all accounts carried by potential respondents and that less than one-half (approximately 264) of all respondents may be required to file reports at any one time. Of the 264 firms, two service bureaus file reports for approximately 40 firms. Therefore, the Commission receives reports electronically from 226 sources. Less than 15 minutes per day are expended by each source in generating files and transmitting them to the Commission. Over a 220-day period, the routine reporting burden on these firms is 12,430 hours.

Each account reported to the Commission must also be identified on Form 102. Form 102 provides information that allows the Commission to combine different accounts held or controlled by the same trader and to identify commercial firms using the markets for hedging. The total number of Forms 102 filed with the Commission is estimated at 4,000 per year for a burden of 800 hours. The final rules require the reporting of all exchanges of futures. The burden associated with this reporting obligation is minimal. The final rules only require that reporting firms aggregate all exchanges of futures and report them as a single sum without further itemization.

Traders file Forms 40 under Rule 18.04, and Forms 103 on call by the Commission under Rule 18.00. The number of traders filing Forms 40 is estimated at 2,400 per year, and the total annual burden for filing such information is estimated to be 800 hours. The Commission has maintained the authority to make special calls on traders under part 18 of the regulations when the information obtained routinely under part 17 of the regulations is incomplete for its purposes. In order to streamline this collection of information, the final rules eliminate Forms 103 altogether for the submission of special call data by large traders. The form of the data collected will be per instruction contained in the special call. The final rules also require the reporting of all exchanges of futures. The burden associated with this reporting obligation for traders is minimal. The final rules only require that traders aggregate all exchanges of futures and report them as a single sum without further itemization.

3. Request for Comment

The Commission invites comment on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments should be directed to Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 (telephone 202–418–5209, e-mail *gmartinaitis@cftc.gov*).

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 19

Commodity futures, Cotton, Grains, Reporting and recordkeeping requirements.

17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

■ 2. In § 15.00, revise paragraph (b)(1)(ii) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) Long or short put or call options that exercise into the same future of any commodity, or long or short put or call options for options on physicals that have identical expirations and exercise into the same physical, on any one contract market.

* * * * *

■ 3. Revise § 15.02 to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission or via the Internet (*http://www.cftc.gov*). Forms to be used for the filing of reports follow, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40	Statement of Reporting Trader.	18.04
'01	Positions of Special Accounts.	17.00
102	Identification of Special Accounts.	17.01
204	Cash Positions of Grain Traders (including Oilseeds and Products).	19.00
304	Cash Positions of Cotton Traders.	19.00

(Approved by the Office of Management and Budget under control numbers 3038–0007 and 3038–0009)

■ 4. Revise § 15.03 to read as follows:

§ 15.03 Reporting levels.

(a) *Definitions.* For purposes of this section:

Broad-based security index is a group or index of securities that does not constitute a narrow-based security index.

HedgeStreet products are contracts offered by HedgeStreet, Inc., a designated contract market, that pay up to $10.00 if in the money upon expiration.

Major foreign currency is the currency, and the cross-rates between the currencies, of Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union.

Narrow-based security index has the same meaning as in section 1a(25) of the Commodity Exchange Act.

Security futures product has the same meaning as in section 1a(32) of the Commodity Exchange Act.

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	150
Corn	250
Oats	60
Soybeans	150
Soybean Oil	200
Soybean Meal	200
Cotton	100
Frozen Concentrated Orange Juice	50
Milk, Class III	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	500
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	200
Crude Oil, Sweet—No. 2 Heating Oil Crack Spread	250
Crude Oil, Sweet—Unleaded Gasoline Crack Spread	150
Unleaded Gasoline—No. 2 Heating Oil Spread Swap	150
Financial:	
3-month (13-Week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,500
10-Year U.S. Treasury Notes	2,000
5-Year U.S. Treasury Notes	2,000
2-Year U.S. Treasury Notes	1,000
10-Year German Federal Government Debt	1,000
5-Year German Federal Government Debt	800
2-Year German Federal Government Debt	500
3-Month Eurodollar Time Deposit Rates	3,000
30-Day Fed Funds	600
1-month LIBOR Rates	600
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
Goldman Sachs Commodity Index	100
Broad-Based Security Indexes:	
S&P 500 Stock Price Index	1,000
Municipal Bond Index	300
Other Broad-Based Securities Indexes	200
Security Futures Products:	
Individual Equity Security	1,000
Narrow-Based Security Index	200
TRAKRS	[1] 50,000
HedgeStreet Products	[1] 125,000
All Other Commodities	25

[1] For purposes of part 17, positions in TRAKRS and HedgeStreet products should both be reported by rounding down to the nearest 1,000 contracts and dividing by 1,000.

PART 16—REPORTS BY CONTRACT MARKETS

■ 5. The authority citation for part 16 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12a, unless otherwise noted.

■ 6. In § 16.00, revise paragraphs (a)(4) and (b) to read as follows:

§ 16.00 Clearing member reports.

(a) * * *

(4) The quantity of purchases of futures for commodities or for derivatives positions and the quantity of sales of futures for commodities or for derivatives positions which are included in the total quantity of contracts bought and sold during the day covered by the report, and the names of the clearing members who made the purchases or sales;

* * * * *

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however*, the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When such data is first available but not later than 12:00 p.m. on the business day following the day to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

* * * * *

■ 7. In § 16.01:

■ a. Revise paragraph (a)(2) and the concluding text of paragraph (a), which follows paragraph (a)(5);

■ b. Remove the phrase ‘‘, in printed form at the office of the contract market,’’ from paragraph (b)(3); and

■ c. Revise paragraph (d).

The revisions read as follows:

§ 16.01 Trading volume, open contracts, prices, and critical dates.

(a) * * *

(2) The total quantity of futures exchanged for commodities or for derivatives positions which are included in the total volume of trading;

(5) * * *

Note to paragraph (a): This information shall be made readily available to the news media and the general public without charge no later than the business day following the day for which publication is made.

* * * * *

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit to the Commission the information specified in paragraphs (a), (b) and (c) of this section as follows:

(1) Using the format, coding structure and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however*, the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When each such form of the data is first available but not later than 7:00 a.m. on the business day following the day to which the information pertains for the delta factor and settlement price and not later than 12:00 p.m. for the remainder of the information. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

* * * * *

■ 8. Revise § 16.06 to read as follows:

§ 16.06 Errors or omissions.

Unless otherwise approved by the Commission or its designee, contract markets shall file corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01 in the format and using the coding structure and electronic data submission procedures approved in writing by the Commission or its designee.

■ 9. In § 16.07, revise paragraphs (a) and (b) to read as follows:

§ 16.07 Delegation of authority to the Director of the Division of Market Oversight and the Executive Director.

* * * * *

(a) Pursuant to §§ 16.00(b) and 16.01(d), the authority to determine whether contract markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a contract market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.00(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by contract markets.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

■ 10. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a, unless otherwise noted.

■ 11. In § 17.00, revise paragraph (a) heading, add paragraph (a)(1), and revise paragraphs (g)(2)(i), (g)(2)(v), (g)(2)(vi), (g)(2)(xi), and (h) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) *Special Accounts—Reportable futures and options positions, delivery notices, and exchanges of futures.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made in accordance with the format, coding and data transmission procedures set forth in paragraph (g) of this section. The report shall show each futures position, separately for each contract market and for each future, and each put and call options position separately for each contract market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for commodities or for derivatives positions and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account. The report shall also show all positions in all futures months and option expirations of that same commodity on the same contract market for which the special account is reportable.

* * * * *

(a) * * *

(2) * * *

(i) *Report type.* This report format will be used to report three types of data: long and short futures and options positions, futures delivery notices issued and stopped, and exchanges of futures for a commodity or for a derivatives position bought and sold. Valid values for the report type are ‘‘RP’’ for reporting positions, ‘‘DN’’ for reporting notices, and ‘‘EP’’ for reporting exchanges of futures for a commodity or for a derivatives position.

* * * * *

(v) *Exchange.* This is a two-character field approved by the Commission to identify the exchange on which a position is held.

(vi) *Put or Call.* Valid values for this field are ‘‘C’’ for a call option and ‘‘P’’ for a put option. For futures, the field is blank.

* * * * *

(xi) *Long-Buy-Stopped (Short-Sell-Issued).* When report type is ‘‘RP’’, report long (short) positions open at the end of a trading day. When report is ‘‘DN’’, report delivery notices stopped (issued) on behalf of the account. When report type is ‘‘EP’’, report purchases (sales) of futures for a commodity or for a derivatives position for the account. Report all information in contracts. Position data are reported on a net or gross basis in accordance with paragraphs (d) and (e) of this section.

* * * * *

(h) *Correction of errors and omissions.* Unless otherwise approved by the Commission or its designee, corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be filed on series ‘01 forms or in the format, coding structure and data transmission

procedures approved in writing by the Commission or its designee.

* * * * *

■ 12. In § 17.01, revise the introductory text and paragraphs (e), (f) and (g) to read as follows:

§ 17.01 Special account designation and identification.

When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the account to the Commission on form 102, in the form and manner specified in § 17.02, showing the information in paragraphs (a) through (f) of this section.

* * * * *

(e) *Account executive.* The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker who introduced the account.

(f) *Reporting firms.* The name and address of the futures commission merchant, clearing member, or foreign broker carrying the account, the name, title and business phone of the authorized representative of the firm filing the form 102 and the date of the form 102. The authorized representative shall sign the report or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.

(g) *Form 102 updates.* If, at the time an account is in special account status and a form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraph (b) of this section since the previous filing, the futures commission merchant, clearing member, or foreign broker shall file an updated form 102 with the Commission within three business days after such change occurs.

■ 13. Revise § 17.02 to read as follows:

§ 17.02 Form, manner and time of filing reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) and (b) of this section.

(a) *Section 17.00(a) reports.* Reports filed under § 17.00(a) shall be submitted through electronic data transmission procedures approved in writing by the Commission or its designee not later than 9 a.m. on the business day following that to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(b) *Section 17.01 reports.* For data submitted pursuant to § 17.01 on form 102:

(1) On call by the Commission or its designee, identify the type of special account specified by items 1(a), 1(b), or 1(c) of form 102, and the name and location of the person to be identified in item 1(d) on the form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its designee, on the same day that the special account in question is first reported to the Commission; and

(2) Submit a completed form 102 within three business days of the first day that the special account in question is reported to the Commission in accordance with instructions by the Commission or its designee.

■ 14. In § 17.03, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

§ 17.03 Delegation of authority to the Director of the Division of Market Oversight and to the Executive Director.

* * * * *

(a) Pursuant to § 17.00(a) and (h), the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under Rule 17.00(a) and Rule 17.00(h) on series '01 forms or using some other format upon a determination that such person is unable to report the information using the format, coding structure or electronic data transmission procedures otherwise required.

(b) Pursuant to § 17.02, the authority to instruct and/or approve the time at which the information required under Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in §§ 17.01(g) and 17.02.

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the form 102 to use a means of authenticating the report other than by signing the form 102 and, if so, to determine the alternative means of authentication that shall be used.

* * * * *

■ 15. In § 17.04, revise the second sentence of paragraph (b) and paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.

* * * * *

(b) * * * The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future or option are carried for the same trader, compute open long or open short positions as instructed in this paragraph.

(1) * * *

(i) The positions represent transactions on a contract market which requires long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis; or

* * * * *

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a contract market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

* * * * *

PART 18—REPORTS BY TRADERS

■ 16. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b), unless otherwise noted.

■ 17. Revise § 18.00 to read as follows:

§ 18.00 Information to be furnished by traders.

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each contract market:

(a) Open contracts;

(b) Purchases and sales;

(c) Delivery notices issued and stopped;

(d) Purchases and sales of futures for commodities or for derivatives positions; and

(e) Options exercised.

(Approved by the Office of Management and Budget under control number 3038–0009)

§ 18.02 [Removed and Reserved.]

■ 18. Remove and reserve § 18.02.

§ 18.06 [Removed and Reserved.]

■ 19. Remove and reserve § 18.06.

PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

■ 20. The authority citation for part 19 continues to read as follows:

Authority: 7 U.S.C. 6g(a), 6i and 12a(5), unless otherwise noted.

■ 21. In § 19.00, revise paragraph (a)(1) and the first sentence of (a)(3) to read as follows:

§ 19.00 General provisions.

(a) * * *

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(b)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

* * * * *

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(b)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. * * *

* * * * *

PART 21—SPECIAL CALLS

■ 22. The authority citation for part 21 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

§ 21.02a [Removed]

■ 23. Remove § 21.02a.

Issued in Washington, DC on December 14, 2004 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–27750 Filed 12–20–04; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 1993F–0357]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a source of fast (high energy) neutrons to inspect containers that may contain food. This action is in response to a petition filed by Science Applications International Corp. (SAIC).

DATES: This rule is effective December 21, 2004. Submit written or electronic objections and requests for a hearing by January 20, 2005. See section VII of this document for information on the filing of objections.

ADDRESSES: You may submit written objections and requests for a hearing, identified by Docket No. 1993F–0357, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 1993F–0357 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1282.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of November 18, 1993 (58 FR 60860), FDA announced that a food additive petition (FAP 3M4399) had been filed by Science Applications International Corp., 2950 Patrick Henry Dr., Santa Clara, CA 95054. The petition proposed that the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) be amended to provide for the safe use of a source of fast (high energy) neutrons to inspect cargo containers that may contain food. In a letter dated January 9, 1998, FDA was informed by Ancore Corp. that they were previously the division of SAIC responsible for this petition but had been reorganized into a separate company. The letter explained that as part of this reorganization, the rights to FAP 3M4399 had been transferred from SAIC to Ancore Corp. (same address as SAIC).

When the petition was filed on November 18, 1993, it contained an environmental assessment (EA). In the notice of filing for this petition, the agency announced that it was placing the EA submitted with this petition on display at the Division of Dockets Management for public review and comment. No comments on the EA were received. Based on the original EA, FDA prepared a finding of no significant impact to the environment dated May 31, 1994. On July 29, 1997, FDA published revised regulations under part 25 (21 CFR part 25), which became effective on August 28, 1997. On May 12, 2003, the petitioner submitted a claim of categorical exclusion under the new § 25.32(j), in accordance with the procedures in § 25.15(a) and (d). Because the environmental record for the FAP was outdated, the agency reviewed the claim of categorical exclusion under § 25.32(j) for this final rule and found it to be warranted.

II. Evaluation of Safety

A source of radiation used for the purpose of inspection of foods meets the definition of a food additive under

section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is ''safe'' for that use. FDA's food additive regulations in 21 CFR 170.3(i) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

III. Evaluation of the Safety of the Petitioned Use of a Source of Radiation

A. Background on Pulsed Fast Neutron Analysis

Neutron-based techniques can be used to screen large cargo containers for contraband such as explosives, chemical warfare agents, and illegal drugs. Unlike conventional systems based on x rays or gamma rays, surveillance systems employing neutrons are able to provide more specific information on a cargo's elemental composition. When a neutron beam is directed at a target, the neutrons interact with target nuclei by either scattering or by nuclear reactions such as neutron capture by the target nuclei. Some captured neutrons result in the production of unstable isotopes that decay by emitting characteristic gamma rays, which can be detected and used to identify emitting chemical elements. Using gamma ray spectroscopy, information can be obtained on the concentration of chemical elements of the scanned object. Because the concentrations of certain elements in these types of illicit materials are characteristically different from other materials, such illicit materials can be detected. The present petition proposes the use of a pulsed fast neutron analysis system employing a beam of high energy neutrons at energies up to 9 million electron volts (MeV) to inspect large cargo containers and trucks that may contain food, provided that the maximum dose absorbed by the food does not exceed 0.01 gray (Gy). The scanning neutron beam operates in one of two modes, fast scan and directed search. Most containers would be exposed to a fast scan search only. During a fast scan, the beam impinges on any one position in the container for at most 1 second. Suspicious containers may be subjected to a directed search. A typical directed search would focus the beam on one position in the container for 10 seconds, but it is possible that it may be necessary to dwell on one location for up to 5 minutes.

B. Radiolysis Products

One of the safety issues considered by FDA when it is evaluating a source of radiation used to inspect or treat food is the potential for formation of products generated in the food by radiation-induced chemical reactions (radiolysis products). The types and amounts of these products generated in the food depend on the chemical constituents of the food and on the conditions of irradiation. Radiation chemistry of components of food previously has been discussed in detail in the agency's final rule permitting the irradiation of meat (62 FR 64107, December 3, 1997). As stated in the meat irradiation final rule, most of the radiolysis products that are generated from food irradiation are also found in foods that have not been irradiated. Some of these compounds are also produced by heating foods, and, in the case of heating, are produced in amounts far greater than the trace amounts that result from irradiating foods.

The amount of radiolysis products generated in food increases with increasing absorbed dose of radiation. FDA has previously established that gamma rays from radionuclides of cobalt-60 or cesium-137, high-energy electrons up to 10 MeV, and x rays up to 5 MeV are safe for the treatment of different types of food at doses ranging from 0.3 kiloGray (kGy) to 30 kGy, depending on the type of food. Because the current petition proposes to limit the maximum absorbed dose to 0.01 Gy (a dose at least 30,000 times less than these approved uses), the amounts of radiolysis products generated in food from the petitioned source of radiation will be less than from these approved sources. Accordingly, FDA has concluded that the proposed use is safe in terms of exposure to potential radiolysis products.

C. Neutron-Induced Radioactivity

Neutrons have a greater propensity to induce radioactivity in scanned materials than x rays and gamma rays of the same energy. To assess the induction of radioactivity in food by neutron irradiation from a cargo surveillance system, the petitioner submitted a 1992 report (the Harwell Report) that was prepared by Harwell Laboratory of the United Kingdom's Atomic Energy Authority (Ref. 1) and a study that was performed by the petitioner (Ref. 2). FDA contracted for an independent evaluation of the data in the petition by the U.S. Department of Energy, Oak Ridge National Laboratory (ORNL) (Ref. 3). The references provide the primary basis for FDA's conclusion regarding the safety of the petitioned use of neutron radiation.

The Harwell Report assessed the radiological implications of the use of neutron-based cargo surveillance techniques on cargoes of food. Three cargo scenarios were investigated; semi-infinite slabs (representing inspection of a large transport container of food), 1 kilogram (kg) of food in a 20-kg suitcase (representing airport inspection of a piece of luggage containing a small quantity of food (e.g., a lunch)), and 2-meter high pallets of food. Calculations were made for 17 different types of food simulating exposure to 0.5 Gy of neutrons (50 times higher than the maximum petitioned dose level of 0.01 Gy) with energies of 1, 2, 5, 8, and 14 MeV. Calculations included induced activities and the resultant doses to consumers after ingesting foods 5 minutes to 1 month after inspection. In addition, in selecting the food to be used for the cargo scenarios, three types of food were considered for the calculations based upon the chemical elements of the foods (e.g. calcium, iron, magnesium, sodium, potassium): A single distribution representing the maximum credible concentrations of the elements in any food; a single ''reference'' distribution of 47 elements obtained from studies of dietary intake; and distributions corresponding to elemental concentrations in 17 common food types. Of these three distributions, the one considered the most realistic was the single ''reference'' distribution because it is based on the daily elemental requirements for ''reference'' man. For this distribution, the report provided calculations of radiation dose per unit activity intake into the body for induced activities of the neutron-irradiated ''reference'' food at a consumption rate of 2.88 kg of food per day and the resultant dose to reference man after ingesting the foods immediately after inspection and up to 1 month after inspection. Prior to irradiation, the ingestion dose of ''reference'' food is reported to be 1.823 $x10^{-10}$ Sieverts per gram (Sv/g). The authors calculated that, depending on the energy of the neutron beam and an absorbed dose in the reference food of 0.5 Gy, the ingestion doses from consuming the ''reference'' food 1 hour, 8 hours, and 1 day after irradiation would range from 9.2×10^{-10} to 3.2×10^{-9} Sv/g, 5.3×10^{-10} to 1.7×10^{-9} Sv/g, and 3.7×10^{-10} to 9.2×10^{-10} Sv/g, respectively. As this example and others below illustrate, any induced radioactivity is small and dissipates rapidly. Therefore, within 1 day, the ingestion dose from inspected foods

would be essentially the same from natural radioactivity in the same food. FDA notes that the Harwell Report addresses a neutron dose 50 times higher than that proposed in the petition and reports radioactivity in the food within 24 hours of inspection. Because food subject to this regulation would be inspected at a far lower dose, and would unlikely be consumed within 24 hours of inspection considering the logistics of food transportation, any residual induced radioactivity would be well below what occurs naturally.

The calculations provided by the petitioner were based on computer modeling and estimated the committed effective dose equivalents to adults, children, and infants due to ingestion of neutron-radiation inspected foods 12 hours after exposure to an 8 MeV neutron fluence rate of 5×10^5 n $cm^{-2}sec^{-1}$, for a period of 1 second, corresponding to a dose of 0.021 milliGray (mGy). The petitioner identified representative foods, the elemental composition of each food, and typical values for the annual amount of each food ingested. The calculated annual effective doses from consumption of foods that have been irradiated ranged from 3.42×10^{-11} to 2.01×10^{-8} Sv, which is significantly below the annual effective dose from natural radioactivity in food that is reported to be 3.9×10^{-4} Sv per year[1]. Although the absorbed dose in this study is approximately 500 times less than the maximum petitioned dose level of 0.01 Gy (10 mGy), the calculated annual effective dose from foods inspected with high energy neutrons is 20 thousand to 11 million times less than the annual effective dose from naturally occurring radioactivity in food.

ORNL performed an independent assessment for a subset of foods considered by the petitioner, and ingestion doses per unit of food were found to be in general agreement with those presented in the petitioner's supportive documentation. In addition, ORNL designed three extreme-case scenarios regarding consumption of food inspected with pulsed fast neutrons. One scenario assumed the entire diet has been irradiated for 1 second and then consumed 12 hours later. This scenario, although highly conservative, is considered to be the most reasonable of the three. The second scenario assumed infrequent (equivalent to 10 full days of dietary needs per year) consumption of food 5 minutes after it had been irradiated for 1 second. The third scenario assumes infrequent tasting of food immediately after it had been irradiated for 5 minutes. The calculated annual effective doses for each scenario is 4.8×10^{-8} Sv, 3.4×10^{-7} Sv, and 1.0×10^{-5} Sv, respectively, which are approximately 40 to 8,000 times less than the annual effective dose from consumption of foods due to naturally occurring radioactivity.

D. Need for a Lower Energy Limit

The petitioner proposed a range of up to 9 MeV and with no lower limit, for the source's average neutron energy. Fast neutrons with high energy (greater than 1 MeV) are necessary to penetrate large cargo containers, whereas lower energy neutrons (less than 1 MeV), including thermal neutrons, have less penetrating power and are more likely to induce radioactivity in food. Therefore, FDA considered whether the data in the petition demonstrate that a source of high energy neutrons would require a lower energy limit to ensure safe use. Although the petitioner originally proposed a neutron energy range up to 9 MeV, the Harwell Report which was submitted by the petitioner is based on neutron energy levels ranging from 1 to 14 MeV and, therefore, supports the safety of neutron energies within that range. Because the data in the petition do not adequately address the issue of induced radioactivity from neutrons of energy below 1 MeV, and because neutrons with such energy levels are not explicitly intended to be used, FDA concludes that a minimum energy level requirement of 1 MeV is appropriate. In addition to this lower energy limit, FDA has also concluded that, based on information in the petition, it is necessary to restrict the neutron source to one that produces monoenergetic neutrons. A monoenergetic source produces neutrons within a narrow energy distribution compared to a source that is not monoenergetic. Such a restriction will limit the number of lower energy neutrons that are emitted even if the source's average neutron energy is 1 MeV.

IV. Conclusion of Safety

FDA has evaluated the data submitted in the petition and other relevant material and concludes that consumption of food inspected by a source of monoenergetic neutrons between 1 and 14 MeV is safe, and that the conditions listed in § 179.21 should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an EA nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Irradiation in the Production, Processing, and Handling of Food

Description: The regulation as amended requires that monoenergetic neutron sources producing neutrons at energies not less than 1 MeV but no greater than 14 MeV used for inspection of container shipments which may contain food bear a label stating the minimum and maximum energy of radiation emitted by the neutron source. The label or accompanying labeling shall also bear adequate directions for safe use and a statement that no food shall be exposed to this radiation source so as to receive a dose in excess of 0.01 Gy. This information is needed to ensure safe use of the source of radiation as a direct food additive.

Description of Respondents: Manufacturers of monoenergetic neutron radiation source.

[1]This dose is based on data from the National Council on Radiation Protection and Measurements, *Ionizing Radiation Exposures of the Population of the United States*, 1987.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
179.21(a)(5), (b)(1)(iv), and (b)(2)(v)	1	1	1	1	1	$100

[1]There are no capital costs associated with this collection of information.

Estimated Annualized Cost for the Burden Hours

The operating and maintenance cost associated with this collection is $100 for preparation of labels.

The information collection requirements in this final rule have been approved under OMB control number 0910–0549. This approval expires January 31, 2005. 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.

VII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Division of Dockets Management and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Findlay, D. J. S., R. A. Forrest, and G. M. Smith, ''Neutron-Induced Activation of Food,'' (Harwell Report), AEA-InTec–1051, 1992.

2. Ryge, P., I. Bar-Nir, M. Simic, ''Food Safety Effects of Inspection by SAIC Pulsed Fast Neutron Analysis Explosive Detection System,'' SAIC, 1992.

3. Easterly, C. E., K. F. Eckerman, R. H. Ross, D. M. Opresko, ''Assessment of Petition to Use Pulsed Fast Neutron Analysis (PFNA) in Inspection of Shipping Containers Containing Foods,'' Oak Ridge National Laboratory, Life Sciences Division, 2003.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

■ 1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

■ 2. Section 179.21 is amended by adding paragraphs (a)(5), (b)(1)(iv), and (b)(2)(v) to read as follows:

§ 179.21 Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing.

* * * * *

(a) * * *

(5) Monoenergetic neutron sources producing neutrons at energies not less than 1 MeV but no greater than 14 MeV.

(b) * * *

(1) * * *

(iv) The minimum and maximum energy of radiation emitted by neutron source.

(2) * * *

(v) A statement that no food shall be exposed to a radiation source listed in paragraph (a)(5) of this section so as to receive a dose in excess of 0.01 gray (Gy).

Dated: December 14, 2004.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–27868 Filed 12–20–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9167]

RIN 1545–BC81

Student FICA Exception

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations providing guidance regarding the employment tax exceptions for student services. These regulations affect schools, colleges, and universities and their employees.

DATES: *Effective date:* December 21, 2004.

Applicability date: These regulations are applicable for services performed on or after April 1, 2005.

FOR FURTHER INFORMATION CONTACT: John Richards of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31 under sections 3121(b)(10) and 3306(c)(10)(B) of the Internal Revenue Code (Code). These sections except from ''employment'' for Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) purposes, respectively, service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at such school, college, or university. In addition, this document contains amendments to 26 CFR part 31 under section 3121(b)(2).

This section excepts from employment for FICA purposes domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending cases at a school, college, or university.

Proposed regulations under sections 3121(b)(2), 3121(b)(10), and 3306(c)(10)(B) were published in the **Federal Register** on February 25, 2004 (69 FR 8604, 2004–10 I.R.B. 571). Written and electronic comments responding to the notice of proposed rulemaking were received. A public hearing was held on June 16, 2004. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

The final regulations provide rules for determining whether an organization is a school, college, or university (SCU) and whether an employee is a student for purposes of sections 3121(b)(10), 3121(b)(2), and 3306(c)(10)(B) of the Code. Many comments were received on the proposed regulations and several witnesses testified at the hearing which was held June 16, 2004. After consideration of the comments and testimony, the Treasury department and the IRS decided to make several significant changes described below.

1. School, College, or University

The exceptions from employment for student services apply only if the employee is a student enrolled and regularly attending classes at a SCU. Under the proposed regulations, whether an organization is a SCU is determined with reference to the organization's primary function. An organization whose primary function is to carry on educational activities qualifies as a SCU for purposes of the student exceptions from employment.

A few commentators suggested that an organization, such as a teaching hospital, that has embedded within it a division or function that carries on educational activities should be treated as a SCU for purposes of the student exceptions from employment.

The final regulations retain the primary function standard as described in the proposed regulations. As discussed in the preamble to the proposed regulations, the primary function standard is based upon the existing statutory and regulatory language under section 3121(b)(10), as well as the legislative history relating to the student exception from employment under section 3121(b)(10).

2. Enrolled and Regularly Attending Classes

The exceptions from employment for student services require that an employee be ''enrolled and regularly attending classes'' in order to have the status of a student. Under the proposed regulations, ''a class is an instructional activity led by a knowledgeable *faculty member* for identified students following an established curriculum.''

Commentators requested clarification regarding whether an instructional activity must be led by a regular faculty member in order to be considered a class, or whether an activity led by an adjunct faculty member, graduate teaching assistant, or other qualified individual hired to lead the activity could be considered a class.

The final regulations clarify that a class is an instructional activity led by a faculty member ''or other qualified individual'' following an established curriculum. Thus, an instructional activity led by an adjunct faculty member, graduate assistant, or other qualified individual can qualify as a class for purposes of the student exceptions from employment.

3. Student Status

The existing student FICA regulations provide that an employee whose services are incident to and for the purpose of pursuing a course of study has the status of a student. § 31.3121(b)(10)–2(c). The proposed regulations provide that in order for an employee's services to be considered incident to and for the purpose of pursuing a course of study, the educational aspect of the relationship between the employee and the employer, as compared to the service aspect, must be predominant. Under the proposed regulations, if an employee is a ''career employee,'' then the service aspect of the employee's relationship with the employer is considered predominant, and thus the employee's services are not considered incident to and for the purpose of pursuing a course of study. The proposed regulations provide that the following employees are considered career employees: (1) Employees who regularly perform services 40 hours or more per week; (2) professional employees; (3) employees who receive certain employment benefits; and (4) employees required to be licensed to work in the field in which the employees are performing services. The IRS requested comments on the criteria used to identify employees having the status of a career employee.

Commentators expressed concern about using these criteria to make certain employees automatically ineligible for the student FICA exception. Rather, according to commentators, whether an employee's services are incident to and for the purpose of pursuing a course of study should be based upon all the relevant facts and circumstances.

The final regulations provide that the educational and service aspects of an employee's relationship with the employer are generally evaluated for an academic term based upon all the relevant facts and circumstances. Similar criteria to those identified in the proposed regulations are described in the final regulations as relevant factors, not dispositive criteria, in determining whether the educational or service aspect of an employee's relationship with the employer is predominant. Nevertheless, under the final regulations, if an employee is a ''full-time employee,'' then the employee's services are not incident to and for the purpose of pursuing a course of study. In addition, based upon comments received, the criteria identified in the proposed regulations have been modified as described below.

A. Full-Time Employee and Hours Worked

The proposed regulations provide that an employee who ''regularly performs services 40 hours or more per week'' is a career employee, and is thus ineligible for the student exception from employment. Commentators expressed concern that the 40 hour criterion would be administratively impracticable because it would be difficult to monitor an employee's actual hours worked during an academic term. In addition, commentators expressed concern that the meaning of ''regularly'' is unclear, making it difficult to assess the effect of changes in hours worked from week to week. Commentators also requested clarification on whether an employee's number of hours worked during academic breaks is considered in determining whether the employee is eligible for the student FICA exception.

The final regulations modify the hours worked criterion. The final regulations provide that the services of a ''full-time employee'' are not incident to and for the purpose of pursuing a course of study. Under the final regulations, a full-time employee is an employee who is considered a full-time employee based upon the employer's standards and practices, except that an employee whose ''normal work schedule is 40 hours or more per week'' is considered a full-time employee. This standard is intended to improve administrability for employers. Whether

an employee is a full-time employee based upon the employer's standards and practices, or based upon the employee's normal work schedule, should be determinable by employers at the start of an academic term, thus reducing instances where an employee's status shifts from student to non-student during an academic term. An employee's normal work schedule does not change, for example, based upon changes in work demands that are unforeseen at the start of an academic term causing the employee to work additional hours beyond his normal work schedule. In addition, time spent performing services that have an educational or instructional aspect is considered in determining an employee's normal work schedule. Finally, the final regulations provide that an employee's work schedule during an academic break is not considered in determining whether the employee's normal work schedule is 40 hours or more per week.

The final regulations provide that if an employee does not have the status of a full-time employee, then the employee's normal work schedule and actual number of hours worked per week are relevant factors in determining whether the service aspect or educational aspect of the employee's relationship with the employer is predominant. Thus, if an employee is normally scheduled to work 20 hours per week, but consistently works more than 40 hours per week, the amount of time actually worked is taken into account in determining whether or not the employee qualifies as a student.

B. Professional Employee and Licensure

1. Professional Employee

The proposed regulations provide that a ''professional employee'' is a career employee, and is thus ineligible for the student exception from employment. Under the proposed regulations, a professional employee is an employee who performs work: (1) Requiring knowledge of an advanced type in a field of science or learning, (2) requiring the consistent exercise of discretion and judgment, and (3) that is predominantly intellectual and varied in character.

Commentators expressed concern that the professional employee criterion would inappropriately disqualify the services of many graduate research and teaching assistants from eligibility for the student exceptions from employment. Commentators maintained that graduate research and teaching assistants are primarily students, and thus their services should not automatically be ineligible for the student exceptions based upon the professional employee criterion.

The final regulations provide that whether an employee is a professional employee is a relevant factor, not a dispositive criterion, in evaluating the service aspect of the employee's relationship with the employer. Under the final regulations, if an employee has the status of a professional employee, then that suggests the service aspect of the employee's relationship with the employer is predominant. Whether a professional employee is a student will depend upon all the facts and circumstances. Thus, under the final regulations, those graduate assistants and other employees whose work is described under the professional employee standard are not automatically ineligible for the student exception.

2. Licensure

The proposed regulations provide that an employee who is required to be licensed under state or local law to work in the field in which the employee performs services is a career employee, and is thus ineligible for the student exception. The preamble to the proposed regulations requested comments on the licensure criterion and whether this criterion should be further refined or clarified.

Commentators expressed concern that the licensure criterion under the proposed regulations is overly broad because it would cause employees licensed for health and safety reasons, such as van drivers and life guards, to be ineligible for student status.

Under the final regulations, an employee's licensure status is not a dispositive criterion. Instead, the final regulations provide if an employee is a professional employee, then whether the employee is licensed is a relevant factor in determining whether the service aspect of the employee's relationship with the employer is predominant. The final regulations provide that if an employee has the status of a licensed, professional employee, then that fact further suggests that the service aspect of the employee's relationship with the employer is predominant. However, a worker who is a licensed, professional employee could be considered a student based upon all the relevant facts and circumstances.

C. Employment Benefits

The proposed regulations provide that an employee who is eligible to receive certain employment benefits is considered a career employee, and is thus ineligible for the student exception.

Commentators expressed concern that eligibility to receive employment benefits should not disqualify an individual from the student exception. Commentators noted that some state statutes make student employees eligible for retirement and other benefits, meaning that student employees in those states could not qualify as students under the proposed regulations. In addition, commentators noted that many colleges and universities permit student employees to make elective contributions to section 403(b) arrangements. Under the proposed regulations, offering this benefit would prohibit student employees from qualifying as students for purposes of the student exceptions from employment.

The final regulations provide that eligibility to receive employment benefits is a relevant factor, not a dispositive criterion, in determining whether the service aspect of an employee's relationship with the employer is predominant. Thus, an employee who is eligible for employment benefits can still qualify as a student for purposes of the student exceptions from employment. In addition, the final regulations provide that eligibility to receive health insurance benefits is not considered in determining whether the service aspect is predominant, and eligibility for benefits mandated by state or local law is given less weight in determining whether the service aspect is predominant.

4. Effective Date

Commentators objected to the proposed effective date of February 25, 2004, asserting that it would take some time to adjust to the new rules set forth in the proposed regulations. In response to these comments, the final regulations are applicable with respect to services performed on or after April 1, 2005.

5. Revenue Procedure Replacing Rev. Proc. 98–16

When the IRS issued the proposed regulations, it also issued Notice 2004–12 (2004–10 I.R.B. 556) suspending Rev. Proc. 98–16 (1998–1 C.B. 403) and proposing to replace it with a revenue procedure that is consistent with the proposed regulations. The IRS solicited comments on the proposed revenue procedure. Comments were received and considered in conjunction with the comments on the proposed regulations. The proposed revenue procedure has been modified in response to comments, and in order to provide guidance that is consistent with the final regulations, is being issued in final form in Rev. Proc.

2005–11 (to be published in I.R.B. 2005–2) modifying and superseding Rev. Proc. 98–16. Rev. Proc. 2005–11 is applicable with respect to services performed on or after April 1, 2005. Taxpayers may rely upon Rev. Proc. 98–16 with respect to services performed prior to April 1, 2005.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Drafting Information

The principal author of these proposed regulations is John Richards of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes and collection of income tax at source.

Adoption of Amendment to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES

■ **Paragraph 1.** The authority citation for part 31 continues to read in part, as follows:

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

■ **Par. 2.** In § 31.3121(b)(2)–1, paragraph (d) is revised to read as follows:

§ 31.3121(b)(2)–1 Domestic service performed by students for certain college organizations.

* * * * *

(d) An organization is a *school, college, or university* within the meaning of section 3121(b)(2) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

* * * * *

■ **Par. 3.** Section 31.3121(b)(10)–2 is amended by:

■ 1. Revising paragraphs (a), (b), (c) and (d).

■ 2. Redesignating paragraph (e) as (g).

■ 3. Adding paragraphs (e) and (f).

The revisions and additions read as follows:

§ 31.3121(b)(10)–2 Services performed by certain students in the employ of a school, college, or university, or of a nonprofit organization auxiliary to a school, college, or university.

(a) *General rule.* (1) Services performed in the employ of a school, college, or university within the meaning of paragraph (c) of this section (whether or not the organization is exempt from income tax) are excepted from employment, if the services are performed by a student within the meaning of paragraph (d) of this section who is enrolled and is regularly attending classes at the school, college, or university.

(2) Services performed in the employ of an organization which is—

(i) Described in section 509(a)(3) and § 1.509(a)–4;

(ii) Organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university within the meaning of paragraph (c) of this section; and

(iii) Operated, supervised, or controlled by or in connection with the school, college, or university; are excepted from employment, if the services are performed by a student who is enrolled and regularly attending classes within the meaning of paragraph (d) of this section at the school, college, or university. The preceding sentence shall not apply to services performed in the employ of a school, college, or university of a State or a political subdivision thereof by a student referred to in section 218(c)(5) of the Social Security Act (42 U.S.C. 418(c)(5)) if such services are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act. For the definitions of ''operated, supervised, or controlled by'', ''supervised or controlled in connection with'', and ''operated in connection with'', see paragraphs (g), (h), and (i), respectively, of § 1.509(a)–4.

(b) *Statutory tests.* For purposes of this section, if an employee has the status of a student within the meaning of paragraph (d) of this section, the amount of remuneration for services performed by the employee, the type of services performed by the employee, and the place where the services are performed are not material. The statutory tests are:

(1) The character of the organization in the employ of which the services are performed as a school, college, or university within the meaning of paragraph (c) of this section, or as an organization described in paragraph (a)(2) of this section, and

(2) The status of the employee as a student enrolled and regularly attending classes within the meaning of paragraph (d) of this section at the school, college, or university within the meaning of paragraph (c) of this section by which the employee is employed or with which the employee's employer is affiliated within the meaning of paragraph (a)(2) of this section.

(c) *School, College, or University.* An organization is a *school, college, or university* within the meaning of section 3121(b)(10) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

(d) *Student Status—general rule.* Whether an employee has the status of a student performing the services shall be determined based on the relationship of the employee with the organization employing the employee. In order to have the status of a student, the employee must perform services in the employ of a school, college, or university within the meaning of paragraph (c) of this section at which the employee is enrolled and regularly attending classes in pursuit of a course of study within the meaning of paragraphs (d)(1) and (2) of this section. In addition, the employee's services must be incident to and for the purpose of pursuing a course of study within the meaning of paragraph (d)(3) of this section at such school, college, or university. An employee who performs services in the employ of an affiliated organization within the meaning of paragraph (a)(2) of this section must be enrolled and regularly attending classes at the affiliated school, college, or university within the meaning of paragraph (c) of this section in pursuit

of a course of study within the meaning of paragraphs (d)(1) and (2) of this section. In addition, the employee's services must be incident to and for the purpose of pursuing a course of study within the meaning of paragraph (d)(3) of this section at such school, college, or university.

(1) *Enrolled and regularly attending classes.* An employee must be enrolled and regularly attending classes at a school, college, or university within the meaning of paragraph (c) of this section at which the employee is employed to have the status of a student within the meaning of section 3121(b)(10). An employee is enrolled within the meaning of section 3121(b)(10) if the employee is registered for a course or courses creditable toward an educational credential described in paragraph (d)(2) of this section. In addition, the employee must be regularly attending classes to have the status of a student. For purposes of this paragraph (d)(1), a class is an instructional activity led by a faculty member or other qualified individual hired by the school, college, or university within the meaning of paragraph (c) of this section for identified students following an established curriculum. Traditional classroom activities are not the sole means of satisfying this requirement. For example, research activities under the supervision of a faculty advisor necessary to complete the requirements for a Ph.D. degree may constitute classes within the meaning of section 3121(b)(10). The frequency of these and similar activities determines whether an employee may be considered to be regularly attending classes.

(2) *Course of study.* An employee must be pursuing a course of study in order to have the status of a student. A course of study is one or more courses the completion of which fulfills the requirements necessary to receive an educational credential granted by a school, college, or university within the meaning of paragraph (c) of this section. For purposes of this paragraph, an educational credential is a degree, certificate, or other recognized educational credential granted by an organization described in paragraph (c) of this section. A course of study also includes one or more courses at a school, college or university within the meaning of paragraph (c) of this section the completion of which fulfills the requirements necessary for the employee to sit for an examination required to receive certification by a recognized organization in a field.

(3) *Incident to and for the purpose of pursuing a course of study.* (i) *General rule.* An employee's services must be incident to and for the purpose of pursuing a course of study in order for the employee to have the status of a student. Whether an employee's services are incident to and for the purpose of pursuing a course of study shall be determined on the basis of the relationship of the employee with the organization for which such services are performed as an employee. The educational aspect of the relationship between the employer and the employee, as compared to the service aspect of the relationship, must be predominant in order for the employee's services to be incident to and for the purpose of pursuing a course of study. The educational aspect of the relationship is evaluated based on all the relevant facts and circumstances related to the educational aspect of the relationship. The service aspect of the relationship is evaluated based on all the relevant facts and circumstances related to the employee's employment. The evaluation of the service aspect of the relationship is not affected by the fact that the services performed by the employee may have an educational, instructional, or training aspect. Except as provided in paragraph (d)(3)(iii) of this section, whether the educational aspect or the service aspect of an employee's relationship with the employer is predominant is determined by considering all the relevant facts and circumstances. Relevant factors in evaluating the educational and service aspects of an employee's relationship with the employer are described in paragraphs (d)(3)(iv) and (v) of this section respectively. There may be facts and circumstances that are relevant in evaluating the educational and service aspects of the relationship in addition to those described in paragraphs (d)(3)(iv) and (v) of this section.

(ii) *Student status determined with respect to each academic term.* Whether an employee's services are incident to and for the purpose of pursuing a course of study is determined separately with respect to each academic term. If the relevant facts and circumstances with respect to an employee's relationship with the employer change significantly during an academic term, whether the employee's services are incident to and for the purpose of pursuing a course of study is reevaluated with respect to services performed during the remainder of the academic term.

(iii) *Full-time employee.* The services of a full-time employee are not incident to and for the purpose of pursuing a course of study. The determination of whether an employee is a full-time employee is based on the employer's standards and practices, except regardless of the employer's classification of the employee, an employee whose normal work schedule is 40 hours or more per week is considered a full-time employee. An employee's normal work schedule is not affected by increases in hours worked caused by work demands unforeseen at the start of an academic term. However, whether an employee is a full-time employee is reevaluated for the remainder of the academic term if the employee changes employment positions with the employer. An employee's work schedule during academic breaks is not considered in determining whether the employee's normal work schedule is 40 hours or more per week. The determination of an employee's normal work schedule is not affected by the fact that the services performed by the employee may have an educational, instructional, or training aspect.

(iv) *Evaluating educational aspect.* The educational aspect of an employee's relationship with the employer is evaluated based on all the relevant facts and circumstances related to the educational aspect of the relationship. The educational aspect of an employee's relationship with the employer is generally evaluated based on the employee's course workload. Whether an employee's course workload is sufficient in order for the employee's employment to be incident to and for the purpose of pursuing a course of study depends on the particular facts and circumstances. A relevant factor in evaluating an employee's course workload is the employee's course workload relative to a full-time course workload at the school, college or university within the meaning of paragraph (c) of this section at which the employee is enrolled and regularly attending classes.

(v) *Evaluating service aspect.* The service aspect of an employee's relationship with the employer is evaluated based on the facts and circumstances related to the employee's employment. Services of an employee with the status of a full-time employee within the meaning of paragraph (d)(3)(iii) of this section are not incident to and for the purpose of pursuing a course of study. Relevant factors in evaluating the service aspect of an employee's relationship with the employer are described in paragraphs (d)(3)(v)(A), (B), and (C) of this section.

(A) *Normal work schedule and hours worked.* If an employee is not a full-time employee within the meaning of paragraph (d)(3)(iii) of this section, then the employee's normal work schedule

and number of hours worked per week are relevant factors in evaluating the service aspect of the employee's relationship with the employer. As an employee's normal work schedule or actual number of hours worked approaches 40 hours per week, it is more likely that the service aspect of the employee's relationship with the employer is predominant. The determination of an employee's normal work schedule and actual number of hours worked is not affected by the fact that some of the services performed by the employee may have an educational, instructional, or training aspect.

(B) *Professional employee.*

(1) If an employee has the status of a professional employee, then that suggests the service aspect of the employee's relationship with the employer is predominant. A professional employee is an employee—

(i) Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes;

(ii) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) Licensed, professional employee. If an employee is a licensed, professional employee, then that further suggests the service aspect of the employee's relationship with the employer is predominant. An employee is a licensed, professional employee if the employee is required to be licensed under state or local law to work in the field in which the employee performs services and the employee is a professional employee within the meaning of paragraph (d)(3)(v)(B)(1) of this section.

(C) *Employment Benefits.* Whether an employee is eligible to receive one or more employment benefits is a relevant factor in evaluating the service aspect of an employee's relationship with the employer. For example, eligibility to receive vacation, paid holiday, and paid sick leave benefits; eligibility to participate in a retirement plan or arrangement described in sections 401(a), 403(b), or 457(a); or eligibility to receive employment benefits such as reduced tuition (other than qualified tuition reduction under section 117(d)(5) provided to a teaching or research assistant who is a graduate student), or benefits under sections 79 (life insurance), 127 (qualified educational assistance), 129 (dependent care assistance programs), or 137 (adoption assistance) suggest that the service aspect of an employee's relationship with the employer is predominant. Eligibility to receive health insurance employment benefits is not considered in determining whether the service aspect of an employee's relationship with the employer is predominant. The weight to be given the fact that an employee is eligible for a particular employment benefit may vary depending on the type of benefit. For example, eligibility to participate in a retirement plan is generally more significant than eligibility to receive a dependent care employment benefit. Additional weight is given to the fact that an employee is eligible to receive an employment benefit if the benefit is generally provided by the employer to employees in positions generally held by non-students. Less weight is given to the fact that an employee is eligible to receive an employment benefit if eligibility for the benefit is mandated by state or local law.

(e) *Examples.* The following examples illustrate the principles of paragraphs (a) through (d) of this section:

Example 1. (i) Employee C is employed by State University T to provide services as a clerk in T's administrative offices, and is enrolled and regularly attending classes at T in pursuit of a B.S. degree in biology. C has a course workload during the academic term which constitutes a full-time course workload at T. C is considered a part-time employee by T during the academic term, and C's normal work schedule is 20 hours per week, but occasionally due to work demands unforeseen at the start of the academic term C works 40 hours or more during a week. C is compensated by hourly wages, and receives no other compensation or employment benefits.

(ii) In this *example,* C is employed by T, a school, college, or university within the meaning of paragraph (c) of this section. C is enrolled and regularly attending classes at T in pursuit of a course of study. C is not a full-time employee based on T's standards, and C's normal work schedule does not cause C to have the status of a full-time employee, even though C may occasionally work 40 hours or more during a week due to unforeseen work demands. C's part-time employment relative to C's full-time course workload indicates that the educational aspect of C's relationship with T is predominant. Additional facts supporting this conclusion are that C is not a professional employee, and C does not receive any employment benefits. Thus, C's services are incident to and for the purpose of pursuing a course of study. Accordingly, C's services are excepted from employment under section 3121(b)(10).

Example 2. (i) Employee D is employed in the accounting department of University U, and is enrolled and regularly attending classes at U in pursuit of an M.B.A. degree. D has a course workload which constitutes a half-time course workload at U. D is considered a full-time employee by U under U's standards and practices.

(ii) In this *example,* D is employed by U, a school, college, or university within the meaning of paragraph (c) of this section. In addition, D is enrolled and regularly attending classes at U in pursuit of a course of study. However, because D is considered a full-time employee by U under its standards and practices, D's services are not incident to and for the purpose of pursuing a course of study. Accordingly, D's services are not excepted from employment under section 3121(b)(10).

Example 3. (i) The facts are the same as in Example 2, except that D is not considered a full-time employee by U, and D's normal work schedule is 32 hours per week. In addition, D's work is repetitive in nature and does not require the consistent exercise of discretion and judgment, and is not predominantly intellectual and varied in character. However, D receives vacation, sick leave, and paid holiday employment benefits, and D is eligible to participate in a retirement plan maintained by U described in section 401(a).

(ii) In this *example,* D's half-time course workload relative to D's hours worked and eligibility for employment benefits indicates that the service aspect of D's relationship with U is predominant, and thus D's services are not incident to and for the purpose of pursuing a course of study. Accordingly, D's services are not excepted from employment under section 3121(b)(10).

Example 4. (i) Employee E is employed by University V to provide patient care services at a teaching hospital that is an unincorporated division of V. These services are performed as part of a medical residency program in a medical specialty sponsored by V. The residency program in which E participates is accredited by the Accreditation Counsel for Graduate Medical Education. Upon completion of the program, E will receive a certificate of completion, and be eligible to sit for an examination required to be certified by a recognized organization in the medical specialty. E's normal work schedule, which includes services having an educational, instructional, or training aspect, is 40 hours or more per week.

(ii) In this *example,* E is employed by V, a school, college, or university within the meaning of paragraph (c) of this section. However, E's normal work schedule calls for E to perform services 40 or more hours per week. E is therefore a full-time employee, and the fact that some of E's services have an educational, instructional, or training aspect does not affect that conclusion. Thus, E's services are not incident to and for the purpose of pursuing a course of study.

Accordingly, E's services are not excepted from employment under section 3121(b)(10) and there is no need to consider other relevant factors, such as whether E is a professional employee or whether E is eligible for employment benefits.

Example 5. (i) Employee F is employed in the facilities management department of University W. F has a B.S. degree in engineering, and is completing the work experience required to sit for an examination to become a professional engineer eligible for licensure under state or local law. F is not attending classes at W.

(ii) In this *example,* F is employed by W, a school, college, or university within the meaning of paragraph (c) of this section. However, F is not enrolled and regularly attending classes at W in pursuit of a course of study. F's work experience required to sit for the examination is not a course of study for purposes of paragraph (d)(2) of this section. Accordingly, F's services are not excepted from employment under section 3121(b)(10).

Example 6. (i) Employee G is employed by Employer X as an apprentice in a skilled trade. X is a subcontractor providing services in the field in which G wishes to specialize. G is pursuing a certificate in the skilled trade from Community College C. G is performing services for X pursuant to an internship program sponsored by C under which its students gain experience, and receive credit toward a certificate in the trade.

(ii) In this *example,* G is employed by X. X is not a school, college or university within the meaning of paragraph (c) of this section. Thus, the exception from employment under section 3121(b)(10) is not available with respect to G's services for X.

Example 7. (i) Employee H is employed by a cosmetology school Y at which H is enrolled and regularly attending classes in pursuit of a certificate of completion. Y's primary function is to carry on educational activities to prepare its students to work in the field of cosmetology. Prior to issuing a certificate, Y requires that its students gain experience in cosmetology services by performing services for the general public on Y's premises. H is scheduled to work and in fact works significantly less than 30 hours per week. H's work does not require knowledge of an advanced type in a field of science or learning, nor is it predominantly intellectual and varied in character. H receives remuneration in the form of hourly compensation from Y for providing cosmetology services to clients of Y, and does not receive any other compensation and is not eligible for employment benefits provided by Y.

(ii) In this *example,* H is employed by Y, a school, college or university within the meaning of paragraph (c) of this section, and is enrolled and regularly attending classes at Y in pursuit of a course of study. Factors indicating the educational aspect of H's relationship with Y is predominant are that H's hours worked are significantly less than 30 per week, H is not a professional employee, and H is not eligible for employment benefits. Based on the relevant facts and circumstances, the educational aspect of H's relationship with Y is predominant. Thus, H's services are incident to and for the purpose of pursuing a course of study. Accordingly, H's services are excepted from employment under section 3121(b)(10).

Example 8. (i) Employee J is a graduate teaching assistant at University Z. J is enrolled and regularly attending classes at Z in pursuit of a graduate degree. J has a course workload which constitutes a full-time course workload at Z. J's normal work schedule is 20 hours per week, but occasionally due to work demands unforeseen at the start of the academic term J works more than 40 hours during a week. J's duties include grading quizzes and exams pursuant to guidelines set forth by the professor, providing class and laboratory instruction pursuant to a lesson plan developed by the professor, and preparing laboratory equipment for demonstrations. J receives a cash stipend and employment benefits in the form of eligibility to make elective employee contributions to an arrangement described in section 403(b). In addition, J receives qualified tuition reduction benefits within the meaning of section 117(d)(5) with respect to the tuition charged for the credits earned for being a graduate teaching assistant.

(ii) In this *example,* J is employed by Z, a school, college, or university within the meaning of paragraph (c) of this section, and is enrolled and regularly attending classes at Z in pursuit of a course of study. J's full-time course workload relative to J's normal work schedule of 20 hours per week indicates that the educational aspect of J's relationship with Z is predominant. In addition, J is not a professional employee because J's work does not require the consistent exercise of discretion and judgment in its performance. On the other hand, the fact that J receives employment benefits in the form of eligibility to make elective employee contributions to an arrangement described in section 403(b) indicates that the employment aspect of J's relationship with Z is predominant. Balancing the relevant facts and circumstances, the educational aspect of J's relationship with Z is predominant. Thus, J's services are incident to and for the purpose of pursuing a course of study. Accordingly, J services are excepted from employment under section 3121(b)(10).

(f) *Effective date.* Paragraphs (a), (b), (c), (d) and (e) of this section apply to services performed on or after April 1, 2005.

* * * * *

■ **Par. 4.** In § 31.3306(c)(10)–2:

■ 1. Paragraph (c) is revised.

■ 2. Paragraphs (d) and (e) are added.

The revision and addition read as follows:

§ 31.3306(c)(10)–2 Services of student in employ of a school, college, or university.

* * * * *

(c) *General rule.* (1) For purposes of this section, the tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university described in paragraph (c)(2) of this section, in the employ of which the employee performs the services. If an employee has the status of a student within the meaning of paragraph (d) of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are not material.

(2) *School, college, or university.* An organization is a *school, college, or university* within the meaning of section 3306(c)(10)(B) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

(d) *Student Status—general rule.* Whether an employee has the status of a student within the meaning of section 3306(c)(10)(B) performing the services shall be determined based on the relationship of the employee with the organization for which the services are performed. In order to have the status of a student within the meaning of section 3306(c)(10)(B), the employee must perform services in the employ of a school, college, or university described in paragraph (c)(2) of this section at which the employee is enrolled and regularly attending classes in pursuit of a course of study within the meaning of paragraphs (d)(1) and (2) of this section. In addition, the employee's services must be incident to and for the purpose of pursuing a course of study at such school, college, or university within the meaning of paragraph (d)(3) of this section.

(1) *Enrolled and regularly attending classes.* An employee must be enrolled and regularly attending classes at a school, college, or university within the meaning of paragraph (c)(2) of this section at which the employee is employed to have the status of a student within the meaning of section 3306(c)(10)(B). An employee is enrolled within the meaning of section 3306(c)(10)(B) if the employee is registered for a course or courses creditable toward an educational credential described in paragraph (d)(2) of this section. In addition, the employee must be regularly attending classes to have the status of a student. For purposes of this paragraph (d)(1), a class is an instructional activity led by a faculty member or other qualified individual hired by the school, college,

or university within the meaning of paragraph (c)(2) of this section for identified students following an established curriculum. The frequency of these and similar activities determines whether an employee may be considered to be regularly attending classes.

(2) *Course of study.* An employee must be pursuing a course of study in order to have the status of a student within the meaning of section 3306(c)(10)(B). A course of study is one or more courses the completion of which fulfills the requirements necessary to receive an educational credential granted by a school, college, or university within the meaning of paragraph (c)(2) of this section. For purposes of this paragraph, an educational credential is a degree, certificate, or other recognized educational credential granted by an organization described in paragraph (c)(2) of this section. In addition, a course of study is one or more courses at a school, college or university within the meaning of paragraph (c)(2) of this section the completion of which fulfills the requirements necessary for the employee to sit for an examination required to receive certification by a recognized organization in a field.

(3) *Incident to and for the purpose of pursuing a course of study.* (i) *General rule.* An employee's services must be incident to and for the purpose of pursuing a course of study in order for the employee to have the status of a student. Whether an employee's services are incident to and for the purpose of pursuing a course of study shall be determined on the basis of the relationship of the employee with the organization for which such services are performed as an employee. The educational aspect of the relationship between the employer and the employee, as compared to the service aspect of the relationship, must be predominant in order for the employee's services to be incident to and for the purpose of pursuing a course of study. The educational aspect of the relationship is evaluated based on all the relevant facts and circumstances related to the educational aspect of the relationship. The service aspect of the relationship is evaluated based on all the relevant facts and circumstances related to the employee's employment. The evaluation of the service aspect of the relationship is not affected by the fact that the services performed by the employee may have an educational, instructional, or training aspect. Except as provided in paragraph (d)(3)(iii) of this section, whether the educational aspect or the service aspect of an employee's relationship with the employer is predominant is determined by considering all the relevant facts and circumstances. Relevant factors in evaluating the educational and service aspects of an employee's relationship with the employer are described in paragraphs (d)(3)(iv) and (v) of this section respectively. There may be facts and circumstances that are relevant in evaluating the educational and service aspects of the relationship in addition to those described in paragraphs (d)(3)(iv) and (v) of this section.

(ii) *Student status determined with respect to each academic term.* Whether an employee's services are incident to and for the purpose of pursuing a course of study is determined separately with respect to each academic term. If the relevant facts and circumstances with respect to an employee's relationship with the employer change significantly during an academic term, whether the employee's services are incident to and for the purpose of pursuing a course of study is reevaluated with respect to services performed during the remainder of the academic term.

(iii) *Full-time employee.* The services of a full-time employee are not incident to and for the purpose of pursuing a course of study. The determination of whether an employee is a full-time employee is based on the employer's standards and practices, except regardless of the employer's classification of the employee, an employee whose normal work schedule is 40 hours or more per week is considered a full-time employee. An employee's normal work schedule is not affected by increases in hours worked caused by work demands unforeseen at the start of an academic term. However, whether an employee is a full-time employee is reevaluated for the remainder of the academic term if the employee changes employment positions with the employer. An employee's work schedule during academic breaks is not considered in determining whether the employee's normal work schedule is 40 hours or more per week. The determination of the employee's normal work schedule is not affected by the fact that the services performed by the individual may have an educational, instructional, or training aspect.

(iv) *Evaluating educational aspect.* The educational aspect of an employee's relationship with the employer is evaluated based on all the relevant facts and circumstances related to the educational aspect of the relationship. The educational aspect of an employee's relationship with the employer is generally evaluated based on the employee's course workload. Whether an employee's course workload is sufficient in order for the employee's employment to be incident to and for the purpose of pursuing a course of study depends on the particular facts and circumstances. A relevant factor in evaluating an employee's course workload is the employee's course workload relative to a full-time course workload at the school, college or university within the meaning of paragraph (c)(2) of this section at which the employee is enrolled and regularly attending classes.

(v) *Evaluating service aspect.* The service aspect of an employee's relationship with the employer is evaluated based on the facts and circumstances related to the employee's employment. Services of an employee with the status of a full-time employee within the meaning of paragraph (d)(3)(iii) of this section are not incident to and for the purpose of pursuing a course of study. Relevant factors in evaluating the service aspect of an employee's relationship with the employer are described in paragraphs (d)(3)(v)(A), (B), and (C) of this section.

(A) *Normal work schedule and hours worked.* If an employee is not a full-time employee within the meaning of paragraph (d)(3)(iii) of this section, then the employee's normal work schedule and number of hours worked per week are relevant factors in evaluating the service aspect of the employee's relationship with the employer. As an employee's normal work schedule or actual number of hours worked approaches 40 hours per week, it is more likely that the service aspect of the employee's relationship with the employer is predominant. The determination of the employee's normal work schedule and actual number of hours worked is not affected by the fact that some of the services performed by the individual may have an educational, instructional, or training aspect.

(B) *Professional employee.*

(1) If an employee has the status of a professional employee, then that suggests that the service aspect of the employee's relationship with the employer is predominant. A professional employee is an employee—

(i) Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes;

(ii) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) Licensed, professional employee. If an employee is a licensed, professional employee, then that further suggests the service aspect of the employee's relationship with the employer is predominant. An employee is a licensed, professional employee if the employee is required to be licensed under state or local law to work in the field in which the employee performs services and the employee is a professional employee within the meaning of paragraph (d)(3)(v)(B)(1) of this section.

(C) *Employment Benefits.* Whether an employee is eligible to receive employment benefits is a relevant factor in evaluating the service aspect of an employee's relationship with the employer. For example, eligibility to receive vacation, paid holiday, and paid sick leave benefits; eligibility to participate in a retirement plan described in section 401(a); or eligibility to receive employment benefits such as reduced tuition, or benefits under section 79 (life insurance), 127 (qualified educational assistance), 129 (dependent care assistance programs), or 137 (adoption assistance) suggest that the service aspect of an employee's relationship with the employer is predominant. Eligibility to receive health insurance employment benefits is not considered in determining whether the service aspect of an employee's relationship with the employer is predominant. The weight to be given the fact that an employee is eligible for a particular benefit may vary depending on the type of employment benefit. For example, eligibility to participate in a retirement plan is generally more significant than eligibility to receive a dependent care employment benefit. Additional weight is given to the fact that an employee is eligible to receive an employment benefit if the benefit is generally provided by the employer to employees in positions generally held by non-students.

(e) *Effective date.* Paragraphs (c) and (d) of this section apply to services performed on or after April 1, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 15, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–27919 Filed 12–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 503

RIN 0702–AA46

Apprehension and Restraint

AGENCY: Department of the Army, DoD.

ACTION: Final rule, removal.

SUMMARY: This action removes 32 CFR part 503 published in the **Federal Register**, March 20, 1963 (28 FR 2732). The rule is being removed because it is now obsolete.

DATES: Effective December 21, 2004.

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: Mr. Nate Evans, (703) 693–2126.

SUPPLEMENTARY INFORMATION: The Office of the Provost Marshal General (DAPM–MPD–LE), is the proponent for regulations in 32 CFR part 503, and has concluded this regulation is obsolete. This regulation has been rescinded. Therefore, it would be helpful in avoiding confusion with the public if 32 CFR, part 503, is removed.

List of Subjects in 32 CFR Part 503

Apprehension and restraint.

PART 503—[REMOVED]

■ Accordingly, for reasons stated in the preamble, under the authority of Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012, 32 CFR part 503, *Apprehension and Restraint,* is removed in its entirety.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–22849 Filed 12–20–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 630

RIN 0702–AA47

Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Authorities

AGENCY: Department of the Army, DoD.

ACTION: Final rule, removal.

SUMMARY: This action removes 32 CFR part 630 published in the **Federal Register** July 26, 1996 (61 FR 39073). The rule is being removed because it is now obsolete and does not affect the general public.

DATES: Effective December 21, 2004.

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: Mr. Nate Evans, (703) 693–2126.

SUPPLEMENTARY INFORMATION: The Office of the Provost Marshal General (DAPM–MPD–LE), is the proponent for regulations in 32 CFR part 630, and has concluded this regulation is obsolete. This regulation has been extensively revised, and the revised regulation does not affect the general public. Therefore, it would be helpful in avoiding confusion with the public if 32 CFR part 630, is removed.

List of Subjects in 31 CFR Part 630

Absentee deserter apprehension program and surrender of military personnel to civilian authorities.

PART 630—[REMOVED]

■ Accordingly, for reasons stated in the preamble, under the authority of 10 U.S.C. 801 through 940; Manual for Courts-Martial, U.S. 2002 revised addition as amended; sec 709, Pub L. 96–154, Defense Appropriation Act. 93 Stat. 1153, 32 CFR Part 630, *Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Authorities,* is removed in its entirety.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–27850 Filed 12–20–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska–04–001]

RIN 1625–AA00

Safety Zones; Gulf of Alaska, Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones in the Gulf of Alaska, in the proximity of Narrow Cape, Kodiak Island, Alaska. These zones are needed to protect persons and vessels operating in the vicinity of the safety zones during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative.

DATES: This temporary final rule is effective from 1 p.m. on December 8, 2004 through 6:30 p.m. on January 31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zones will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The process of scheduling a rocket launch is uncertain due to unforeseen delays such as weather that can cause cancellation of the launch. The Coast Guard attempts to publish a final rule as close to the expected launch date as possible, however, these attempts often prove futile due to frequent re-scheduling. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zones will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

Background and Purpose

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska between 5 p.m. and 1 a.m. each day between December 8, 2004 and January 31, 2005 until rocket launch operations are complete. The safety zones are necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zones during those times in which a launch schedule does not pose a hazard to mariners. Because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Rule

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 8 hours each day between December 8, 2004 and January 31, 2004. The sizes of the safety zones have been set based upon the trajectory information in order to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The Pacific Range Support Team has identified a launch area exclusion zone at Narrow Cape and southwest along the launch trajectory. The COTP will enforce two safety zones in support of this exclusion zone. The first established safety zone includes the waters of the Gulf of Alaska and adjacent coastal areas within the boundaries defined by a line drawn from a point located at 57°27.50′ N, 152°25.00′ W, then southeast to a point located at 57°22.75′ N, 152°15.00′ W, then southwest to a point located at 57°11.00′ N, 152°36.00′ W, and then northwest to a point located at 57°15.75′ N, 152°46.5′ W, and then northeast to the point located at 57°27.50′ N, 152°25.00′ W. The second established safety zone includes the waters adjacent to Narrow Cape within the boundaries defined by a circle centered at 57°26.1′ N, 152°20.49′ W, with a radius of 5 nautical miles. All coordinates reference Datum: NAD 1983.

These safety zones are necessary to protect spectators and transiting vessels from the potential hazards associated with the rocket launch. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zones during those times in which the launch does not pose a hazard to mariners.

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 cost 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 the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. Because the hazardous condition is expected to last for approximately 8 hours each day, and because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have significant economic impacts 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 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 affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska off Narrow Cape from 1 p.m. to 1 a.m. each day from December 8, 2004 until January 31, 2005 until rocket launch operations are complete. Because the hazardous situation, during the planned rocket launch hours, is expected to last for approximately 8 hours each day, and because general permission to enter the safety zones will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal impact to small entities.

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 this rule 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct affect 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 proposed 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 (34)(g), of the Instruction, from further environmental documentation because it is a safety zone.

Under figure 2–1, paragraph (34)(g), 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 165

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

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

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

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

■ 2. From December 8, 2004 to January 31, 2005, add temporary § 165.T17–008 to read as follows:

§ 165.T17–008 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island, AK: Safety Zones.

(a) *Description.* The following are safety zones:

(i) An area in the Gulf of Alaska, in the proximity of Narrow Cape, Kodiak Island, Alaska, including the waters of the Gulf of Alaska that are within the area defined by a line drawn from a point located at 57°27.50′ N, 152°25.00′ W, then southeast to a point located at 57°22.75′ N, 152°15.00′ W, then

southwest to a point located at 57°11.00′ N, 152°36.00′ W, and then northwest to a point located at 57°15.75′ N, 152°46.5′ W, and then northeast to the point located at 57°27.50′ N, 152°25.00′ W.

(ii) The area defined by a circle centered at 57°26.1′ N, 152°20.49′ W, with a radius of 5 nautical miles. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zones in this section will be enforced from 1 p.m. to 1 a.m. each day from December 8, 2004 to January 31, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zones.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in these safety zones, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: December 2, 2004.

T.D. Harrison,

Commander, U.S. Coast Guard, Captain of the Port, Western Alaska, Acting.

[FR Doc. 04–27821 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska–04–002]

RIN 1625–AA00

Safety Zone; Gulf of Alaska, Sitkinak Island, Kodiak Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, east of Sitkinak Island, Kodiak Island, Alaska. The zone is needed to protect persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative.

DATES: This temporary final rule is effective from 1 p.m. on December 8, 2004 through 6:30 p.m. on January 31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Because the hazardous condition is expected to last for approximately 8 hours each day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The process of scheduling a rocket launch is uncertain due to unforeseen delays such as weather that can cause cancellation of the launch. The Coast Guard attempts to publish a final rule as close to the expected launch date as possible, however, these attempts often prove futile due to frequent re-scheduling. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect human life and property from possible fallout from the rocket launch. The parameters of the zone will not unduly impair business and transits of vessels. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of each launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

Background and Purpose

The Alaska Aerospace Development Corporation will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between 5 p.m. and 1 a.m. each day between December 8, 2004 and January 31, 2005 until rocket launch operations are complete. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which a launch schedule does not pose a hazard to mariners. Because the hazardous situation is expected to last for approximately 8 hours each day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Rule

From the latest information received from the Alaska Aerospace Development Corporation, the launch window is scheduled for 8 hours each day between December 8, 2004 and January 31, 2004. The size of the safety zone has been set to protect the public from the reentry and impact of a rocket motor. The Pacific Range Support Team has identified a first stage exclusion zone at Sitkinak Island along the launch trajectory. The COTP will enforce a single safety zone in support of this exclusion zone. The established safety zone includes the waters of the Gulf of Alaska and adjacent coastal areas within the boundaries defined by a line drawn from a point located at 56°40.50′ N, 153°42.50′ W, then southeast to a point located at 56°34.00′ N, 153°29.50′ W, then southwest to a point located at 56°12.50′ N, 154°2.50′ W, and then northwest to a point located at 56°19.00′ N, 154°16.50′ W, and then northeast to the point located at 56°40.50′ N, 153°42.50′ W. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect transiting vessels from the

potential hazards associated with the Rocket launch. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners.

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 cost 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) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. Because the hazardous condition is expected to last for approximately 8 hours each day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal economic impact on commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have significant economic impacts 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 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 affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or fish in a portion of the Gulf of Alaska off Sitkinak Island from 1 p.m. to 1 a.m. each day from December 8, 2004 until January 31, 2005 until rocket launch operations are complete. Because the hazardous situation, during the planned rocket launch hours, is expected to last for approximately 8 hours each day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. Before the effective period, we will issue maritime advisories widely available to users of the affected portion of the Gulf of Alaska. We believe there will be minimal impact to small entities.

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 this rule 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct affect 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 proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the

Instruction, from further environmental documentation because it is a safety zone.

Under figure 2–1, paragraph (34)(g), 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 165

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

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

PART 165—[AMENDED]

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

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

■ 2. From December 8, 2004 to January 31, 2005, add temporary § 165.T17–009 to read as follows:

§ 165.T17–009 Alaska Aerospace Development Corporation, Sitkinak Island, Kodiak Island, AK: Safety Zones

(a) *Description.* This safety zone includes an area in the Gulf of Alaska, west of Sitkinak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 56°40.50′ N, 153°42.50′ W, then southeast to a point located at 56°34.00′ N, 153°29.50′ W, then southwest to a point located at 56°12.50′ N, 154°2.50′ W, and then northwest to a point located at 56°19.00′ N, 154°16.50′ W, and then northeast to the point located at 56°40.50′ N, 153°42.50′ W. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zone in this section will be enforced from 1 p.m. 1 a.m. each day from December 8, 2004 to January 31, 2005.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in ? 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative.

The Captain of the Port, Western Alaska, or his on-scene representative may be contacted at the Kodiak Launch Complex via VHF marine channel 16.

Dated: December 2, 2004.

T.D. Harrison,

Commander, U.S. Coast Guard, Captain of the Port, Western Alaska, Acting.

[FR Doc. 04–27822 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–043]

RIN 1625–AA00

Security and Safety Zone; Protection of Large Passenger Vessels, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule; notice of suspension of enforcement.

SUMMARY: The Captain of the Port, Portland, OR, will suspend enforcement of the Large Passenger Vessel Security and Safety Zones that were created by a final rule published in the **Federal Register** on September 12, 2003. The zones provide for the security and safety of large passenger vessels in the navigable waters of Portland, OR, and adjacent waters. Enforcement of these security and safety zones will be suspended until further notice.

DATES: Enforcement of 33 CFR 165.1318 will be suspended commencing December 8, 2004.

FOR FURTHER INFORMATION CONTACT: LTjg B. Audirsch, c/o Captain of the Port Portland, OR 6767 North Basin Avenue, Portland, OR 97217 at (503) 247–4015 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On September 12, 2003, the Coast Guard published a final rule (68 FR 53677) establishing regulations in 33 CFR 165.1318 for the security and safety of large passenger vessels in the navigable waters of Portland, OR, and adjacent waters, of Oregon and Washington. These security and safety zones provide for the regulation of vessel traffic in the vicinity of certain large passenger vessels (as defined in 33 CFR 165.1318(b)) and exclude persons and vessels from the immediate vicinity of these large passenger vessels. Entry into these zones is prohibited unless otherwise exempted or excluded under 33 CFR 165.1318 or unless authorized by the Captain of the Port or his designee. The Captain of the Port, Portland, OR, will suspend enforcement of the Large Passenger Vessel Safety and Security Zones established in 33 CFR 165.1318 on December 8, 2004.

Dated: December 8, 2004.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 04–27897 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 134–082, CA 250–0453, CA 310–0465; FRL–7847–6]

Revisions to the Arizona State Implementation Plan, Maricopa County Environmental Services Department; Revisions to the California State Implementation Plan, South Coast Air Quality Management District; Disapproval of State Implementation Plan Revisions, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP) and revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California SIP. The revisions for MCESD were proposed in the **Federal Register** on September 30, 2004, and concern volatile organic compound (VOC) emissions from solvent cleaning. The revisions for SCAQMD were proposed in the **Federal Register** on September 14, 2004, and concern oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions from facilities emitting 4 tons or more per year of NO_X and/or SO_X under the SCAQMD Regional Clean Air Incentives Market (RECLAIM). We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EPA is also finalizing disapproval of a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This

action was proposed in the **Federal Register** on June 1, 2004, and concerns excess emissions during breakdown. There are no sanctions associated with this disapproval.

DATES: This rule is effective on January 20, 2005.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Arizona Department of Environmental Quality, 1110 W. Washington Sttreet, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, 1001 N. Central Avenue, Suite 695, Phoenix, AZ 85004.

A copy of MCESD Rule 331 may also be available via the Internet at *http://www.maricopa.gov/envsvc/AIR/ruledesc.asp.* Copies of SCAQMD Rule 2015 and MBUAPCD Rule 214 may be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that these are not EPA websites and may not contain the same versions of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On September 20, 2004 (69 FR 58375), and September 14, 2004 (69 FR 55386), respectively, EPA proposed to approve the following rules into the Arizona SIP (MCESD 331) and the California SIP (SCAQMD 2015).

Local agency	Rule No.	Rule title	Adopted	Submitted
MCESD	331	Solvent Cleaning	04/21/04	07/28/04
SCAQMD	2015	Backstop Provisions	06/04/04	07/29/04

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

On June 1, 2004 (69 FR 30845), EPA proposed to disapprove the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule	Rule title	Adopted	Submitted
MBUAPCD	214	Breakdown Condition	03/21/01	10/30/01

We proposed to disapprove this rule because some rule provisions conflict with section 110 and part D of the Act. These provisions deal with district enforcement discretion. EPA considers it unproductive and potentially confusing to approve an enforcement discretion rule into the SIP.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period for each of these actions. We received no comments on any of these actions during the respective comment periods.

III. EPA Action

No comments were submitted that change our assessment that MCESD Rule 331 and SCAQMD Rule 2015 comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the Arizona SIP (MCESD Rule 331) and the California SIP (SCAQMD Rule 2015).

No comments were submitted that change our assessment of MBUAPCD Rule 214 as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a full disapproval of the submitted rule. Because this is not a required submittal, there are no sanctions associated with this disapproval. Note that the submitted rule has been adopted by the MBUAPCD, and EPA's final disapproval does not prevent the local agency from enforcing it.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. 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.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the States are already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S.*

EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval and disapproval actions promulgated do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves or disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves or disapproves state rules implementing federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 20, 2005.

K. Petitions for Judicial Review

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 February 22, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 18, 2004.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(117) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(117) Amended regulation was submitted on July 28, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 331 adopted on April 21, 2004.

* * * * *

Subpart F—California

■ 3. Section 52.220 is amended by adding paragraph (c)(333) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(333) New and amended regulations for the following AQMD were submitted on July 29, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 2015 adopted on October 15, 1993 and amended on June 4, 2004.

■ 4. Section 52.271 is amended by adding paragraph (b)(7) to read as follows:

§ 52.271 Malfunction, startup, and shutdown regulations.

* * * * *

(b) * * *

(7) Monterey Bay Unified Air Pollution Control District.

(i) Rule 214, Breakdown Condition, submitted on October 30, 2001.

* * * * *

[FR Doc. 04–27883 Filed 12–20–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–48]

Broadcast Services; Children's Television

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for rules published at 61 FR 43981 (August 27, 1996). Therefore, the Commission announces that 47 CFR 73.673 and 47 CFR 73.3500 are effective January 2, 1997.

DATES: The rules in 47 CFR 73.673 and 47 CFR 73.3500 published at 61 FR 43981 (August 27, 1996) are effective January 2, 1997.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for rules published at 61 FR 43981 (August 27, 1996). Through this document, the Commission announces that it received this approval on December 30, 1996. The effective date for rules 47 CFR 73.673 and 47 CFR 73.3500 is January 2, 1997.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Cathy Williams, Federal Communications Commission, (202) 418–2918 or via the Internet at *cathy.williams@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–27875 Filed 12–20–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 69, No. 244

Tuesday, December 21, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19414; Airspace Docket No. 04–AAL–16]

Proposed Establishment of Class E Airspace; Angoon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Angoon, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Angoon Seaplane Base. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Angoon, AK.

DATES: Comments must be received on or before February 4,2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19414/ Airspace Docket No. 04–AAL–16, 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.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at.*

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–2004–19414/Airspace Docket No. 04–AAL–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (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

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Angoon, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Angoon, AK.

The Special Instrument Flight Procedures developed for the Angoon Seaplane Base currently are not contained in Class E airspace. The FAA is proposing to establish Class E airspace at Angoon, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Angoon Seaplane Base area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because in proposes to create Class E airspace sufficient to contain aircraft executing instrument approaches at Angoon Seaplane Base and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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 14 CFR part 71 continues to read as follows:

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

§ 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 to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Angoon, AK [New]

Angoon Seaplane Base, AK.

(Lat. 57°30′13″ N., long. 134°35′07″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Angoon Seaplane Base.

* * * * *

Issued in Anchorage, AK, on December 10, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 04–27825 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149519–03]

RIN 1545–BC63

Section 707 Regarding Disguised Sales, Generally; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to proposed regulations which were published in the **Federal Register** on Friday, November 26, 2004 (69 FR 68838). The proposed regulations relates to the treatment of transactions between a partnership and its partners as disguised sales of partnership interests between the partners.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke or Christopher L. Trump, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that is the subject of this correction is under section 707(a)(2)(B) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contain an error that may prove to be misleading and is in need of clarification.

Correction to Publication

Accordingly, the publication of the proposed regulations (REG–149519–03), which was the subject of FR Doc. 04–26112, is corrected as follows:

On page 68843, column 3, in the preamble under the paragraph heading, ''Review of Existing Regulations'', line 5, the language ''§§ 1.707–3, 1.707–4, and 1.707–5.'' is corrected to read ''§§ 1.707–3, 1.707–4, 1.707–5 and 1.707–6.''.

Cynthia E. Grigsby,

Acting Chief, Regulations and Publications Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04–27913 Filed 12–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–155608–02]

RIN 1545–BB64

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations (REG–155608–02) that was published in the **Federal Register** on Tuesday, November 16, 2004 (69 FR 67075). The proposed regulations provide updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3).

FOR FURTHER INFORMATION CONTACT: R. Lisa Mojiri-Azad or JohnTolleris at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of proposed rulemaking by cross reference to temporary regulations (REG–155608–02) that is the subject of this correction are under sections 403(b) of the Internal Revenue Code, and under related provisions of sections 402(b), 402(g), 414(c), and 3121(a)(5)(D).

Need for Correction

As published, the notice of proposed rulemaking and notice of proposed rulemaking by cross reference to

temporary regulations REG–155608–02) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of proposed rulemaking by cross reference to temporary regulations (REG–155608–02), which was the subject of FR Doc. 04–25237 is corrected as follows:

1. On page 67082, column 2, in the preamble, under the paragraph heading ''Commingling Assets'', line 8, the language ''account to be treated as a tax exempt.'' is corrected to read ''account to be treated as a tax exempt organization.''.

§ 1.403(b)–8 [Corrected]

2. On page 67096, column 3, § 1.403(b)–8, paragraph (d)(2)(ii), line 4, the language ''account) § 1.403(b)–6(d) are satisfied'' is corrected to read ''account) and § 1.403(b)–6(d) are satisfied''.

3. On page 67096, column 3, § 1.403(b)–8, paragraph (d)(3), line 4, the language ''includes any assets that other than stock'' is corrected to read ''includes any assets other than stocks''.

§ 1.414(c)–5 [Corrected]

4. On page 67099, column 3, § 1.414(c)–5, paragraph (d), line 7, the language under the nursing home may be under'' is corrected to read ''the nursing home may be under''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–27918 Filed 12–20–04; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL MEDIATION BOARD

29 CFR Part 1210

Administration of National Railroad Adjustment Board Functions and Activities—Fee Proposal

AGENCY: National Mediation Board.

ACTION: Proposed rule; notice of meeting.

SUMMARY: The National Mediation Board (NMB) extends an invitation to interested parties to attend an open meeting with the Board and its staff on Tuesday, January 11, 2005. The Board meeting will be held from 9 a.m. until 12 noon. The meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor Relations Board, 1099 14th St., NW., Washington, DC 20570. During the public meeting, the NMB invites interested persons to share their views on the possible establishment of a fee schedule by the NMB for the provision of certain arbitration services, primarily affecting minor labor disputes in the rail industry.

DATES: The meeting will be held on January 11, 2005, from 9 a.m. to 12 noon. Due to time and seating considerations, individuals desiring to attend the meeting, or to make a presentation before the Board, must notify the NMB staff, in writing, no later than 4 p.m. on Tuesday, January 4, 2005.

ADDRESSES: The public meeting will be held in the Margaret A. Browning Hearing Room, (Room 11000), National Labor Relations Board, 1099 14th St., NW., Washington, DC 20570. Requests to attend the meetings must be in writing, and must be addressed to Mr. Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250—East, Washington, DC 20005. Attn: NMB Docket No. 2003–01. Written requests may be sent electronically to the following e-mail address: *arb@nmb.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board (telephone 202–692–5057).

SUPPLEMENTARY INFORMATION: The National Mediation Board will hold an open public meeting on Tuesday, January 11, 2005, from 9 a.m. until 12 noon. The purpose of the public meeting will be to solicit the views of interested persons concerning the possible establishment of a fee schedule by the NMB for the provision of certain arbitration services, primarily affecting minor labor disputes in the rail industry.

On Monday, August 9, 2004, the NMB published a Notice of Proposed Rulemaking (NPRM) (69 FR 48177), proposing among other things, the establishment of certain fees for providing arbitration services. *See* 69 FR 48182–48183. These fees are proposed to be codified at 29 CFR, 1210.12(b). Because of the public interest that was generated by the Board's fee proposal, and because the NPRM provided the first opportunity for direct public comment on the specific contents of a fee proposal, the NMB is providing another opportunity for interested persons to provide their views to the Board on this important matter.

Individuals desiring to attend the meeting must notify the NMB staff, in writing, at the above listed physical or e-mail address, by the deadline noted. If an individual desires to make a presentation to the Board at the meeting, he or she is required to submit a brief outline of the presentation when making the request. In addition, a full written statement must be submitted no later than 4 p.m. on Tuesday, January 4, 2005. In lieu of making an oral presentation, individuals may submit a written statement for the record.

To attend the meeting, all potential attendees must include in their request: (1) Their full name and (2) organizational affiliation (if any). Attendees are also reminded to bring a photo identification card with them to the public meeting in order to gain admittance to the building. Due to time and potential space limitations in the meeting room, the NMB will notify individuals of their attendance and/or speaking states. (*i.e.*, preliminary time for their presentation) prior to the meeting. Time allocations for oral presentations will depend upon the number of individuals who desire to make presentations to the Board. Individuals should be prepared to summarize their written statements at the meeting.

AGENDA: The meeting will be limited to issues relating to the NMB's proposal regarding the establishment of a fee schedule for certain arbitration services as contained at proposed 29 CFR 1210.12 ''Fees'', appearing in the **Federal Register** on August 9, 2004, at 69 FR 48182–48183. A copy of the full NPRM, including the proposed section on ''Fees'', may be obtained from the NMB's Web site at *http://www.nmb.gov/arbitration/arb-rulemaking.html*.

Dated: December 16, 2004.

Roland Watkins,

National Railroad Adjustment Board Administrator.

[FR Doc. 04–27861 Filed 12–20–04; 8:45 am]

BILLING CODE 7550–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 121

[Docket No. RSPA–91–13289; FS–1]

RIN 2137–AC00

Safeguarding Food From Contamination During Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: RSPA is proposing to address the safe transportation of food and food products in commerce by referencing in its regulations requirements of the U.S. Department of Agriculture and the Food and Drug Administration of the U.S. Department of Health and Human Services that apply to persons who offer for transportation or transport food in commerce by motor vehicle or rail car. This action is intended to implement the Sanitary Food Transportation Act of 1990.

DATES: Comments must be received by January 20, 2005.

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

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site. You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the address indicated below for ''Hand Delivery.''

E-mail: Include the Docket Identification Number, RSPA–91–13289 (FS–1), in the subject line of the message.

Fax: 1–202–493–2251.

Mail: Docket management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

Hand Delivery: To the Dockets Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name (Research and Special Programs Administration) and docket number (RSPA–91–13289 (FS–1)) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comments. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that RSPA received your comments, you should include a self-addressed stamped postcard. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided, and will be accessible to Internet users. Please see the Privacy Act section of this document.

FOR FURTHER INFORMATION CONTACT: Helen Engrum, Office of Hazardous Materials Standards, RSPA, 202–366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanitary Food Transportation Act of 1990 (SFTA; 49 U.S.C. 5701 *et seq.*) requires the Secretary of Transportation (the Secretary) to promulgate regulations to promote the safe transportation of food products. Among other requirements, SFTA requires the Secretary, in consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to: (1) Issue regulations with respect to the transportation of food, food additives, drugs, devices, and cosmetics, as defined in the Food, Drug, and Cosmetic Act, in motor vehicles or rail cars that are used to transport either refuse or non-food products that could make the food unsafe as a result of such transportation; (2) issue regulations governing the construction and use of cargo tanks and rail cars used to transport food products, including prohibiting the transportation of food products in cargo tanks and rail cars used to transport non-food products that would make the products unsafe; and (3) designate and publish a list of non-food products that may not be transported in cargo tanks and tank cars that are also used to transport food products. The Secretary delegated the authority to issue regulations under SFTA to the Research and Special Administration (RSPA, us). 49 CFR 1.53(i).

II. Federal Food Safety Responsibilities

The U.S. Department of Agriculture (USDA) is responsible for regulating meat, poultry, and eggs and egg products under authority of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the Egg Product Inspection Act (21 U.S.C. 1031 *et seq.*). In carrying out its responsibilities, USDA conducts inspections of warehouses, transporters, retail stores, restaurants, and other places where meat, poultry, and egg products are handled and stored. The Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) has responsibility for food safety (including transportation) under the Food, Drug, and Cosmetics Act (21 U.S.C. 332 *et seq.*). In carrying out its responsibilities, FDA conducts inspections of establishments not otherwise regulated by USDA that manufacture, process, pack, or hold foods. FDA also inspects vehicles and other conveyances, such as boats, trains, and airplanes, in which foods are transported or held in interstate commerce.

III. Previously Published NPRM

On May 21, 1993, we published an NPRM (58 FR 29698) proposing regulations to implement SFTA. The NPRM proposed to restrict a cargo tank, tank car, or portable tank to the carriage of either food products or non-food products. We did not identify any non-food products that would be safe to transport in a tank vehicle that carries food products and, therefore, did not propose an ''acceptable non-food product list.'' For other motor vehicles and rail cars, the proposal would forbid the transportation of food products in the same vehicle as Division 6.1 (poisons) and Division 6.2 (infectious substances) materials, and hazardous and solid wastes. However, the NPRM proposed to permit these unacceptable materials to be transported in vehicles also used to transport food products provided the vehicle is free of any contaminating residues. We received 80 comments in response to the NPRM from food producers and processors, chemical companies, transportation companies, and state government agencies. The commenters addressed proposals in the NPRM applicable to communication standards, recordkeeping requirements; vehicle utilization standards; design and material standards for construction of cargo tanks, portable tanks, and tank cars; minimum insurance or liability requirements; lists of ''acceptable non-food products'' and ''unacceptable non-food products''; and a waiver program. Commenters generally opposed the proposals in the NPRM. Several commenters recommended that DOT defer to FDA and USDA on food safety issues. For example, the National Food Processors Association, on behalf of twenty food related trade associations, stated that implementation of SFTA should be transferred from DOT to FDA and USDA. The National Institute of Oilseed Products and Hudson Tank Terminals Corporation recommended that RSPA incorporate by reference the FDA regulations applicable to food safety. Exxon Chemical Americas stated that ''the current FDA strictures prohibiting 'adulteration' are sufficient to insure the safety of [food] additives.'' Conagra stated that ''Detailed specifications for food contact surfaces [of tanks and tank vehicles] is unnecessary, particularly in light of the existence of regulations already promulgated by the Food and Drug

Administration and the U.S. Department of Agriculture.'' GE Medical Systems stated that compliance with FDA regulations ''adequately protects medical devices from contamination during transportation,'' and FDA's required reports of any malfunction of a medical device make a separate ''DOT incident reporting system'' unwarranted.

IV. Proposals in This SNPRM

Since publication of the NPRM in 1993, the Department, in coordination with USDA and FDA, has concluded that the expertise for ensuring the safety of our nation's food supply, including transportation, lies with USDA and FDA. These agencies agree that the public interest regarding the safe transportation of food will be more effectively served and better addressed by building on the present statutory authority, existing enforcement and technical expertise, and operational framework already established within USDA and FDA. Implementation of a food transportation safety program under DOT would require unnecessary duplication of personnel and funds to promulgate regulations and to conduct certain training, research, and testing activities and could result in duplication, overlap, or conflict with current or pending HHS or USDA regulations.

Moreover, both FDA and USDA have regulations in place or have issued guidelines and recommendations that address the sanitary food issues highlighted in SFTA. For example, on July 25, 1996 (61 FR 38805), USDA published a final rule requiring food processors who handle meat, poultry, or egg products to implement Hazard Analysis and Critical Control Point (HACCP) systems to identify points in the food production process where contamination or adulteration could occur and implement measures to reduce or eliminate the possibility of contamination (9 CFR Part 417 and related provisions in 9 CFR Parts 304, 327, and 381). The hazard analysis required by the USDA HACCP regulations must address food safety hazards that can occur before, during, and after entry of the food or food product into the establishment, including hazards that can occur during transportation. USDA regulations require transport vehicles used to transport meat, poultry, and egg products to be reasonably free of foreign matter (such as dust, dirt, rust, or other articles or residues) and free of chemical residues so that products will not be adulterated. Further, any cleaning compound, lye, soda solution, or other chemical used in cleaning a transport vehicle must be thoroughly removed prior to its use (*see* 9 CFR Parts 326 and 381).

On January 19, 2001 (66 FR 6138), FDA adopted regulations requiring juice processors to develop and implement HACCP systems for their processing operations (9 CFR Part 120). The regulations are similar to the USDA HACCP regulations and require each processor to conduct a hazard analysis of food hazards that can be introduced both within and outside the processing plant environment, including food hazards that can occur before, during, and after harvest and during transportation. In addition, FDA regulations establish current good manufacturing practices for manufacturing, packing, or holding human food. These regulations include requirements for protecting food from contamination or adulterations during manufacture and transportation. FDA requires finished food to be stored and transported under conditions that will protect it against physical, chemical, and microbial contamination (*see* 21 CFR 110.93).

Both USDA and FDA have issued guidelines to assist food processors to comply with the HACCP and good manufacturing practices regulations. USDA's Food Safety and Inspection Service (FSIS) on August 4, 2003, issued ''FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products'' (FSIS Guidelines; 68 FR 45789). The FSIS Guidelines address food safety measure that should be taken by shippers from the point of food production through delivery. Among other measures, the FSIS Guidelines recommend that processors and distributors identify all points of vulnerability where there is the potential for vulnerability or contamination to occur and define controls to prevent product adulteration and contamination during transportation and storage. The FSIS Guidelines address the design and construction of vehicles used to transport food and sanitizing and maintaining food transportation vehicles. Importantly, the FSIS Guidelines recommend that transport vehicles, containers, and conveyances should be designated and marked ''for food use only'' and be used only for transporting foods and, if feasible, restricted to a single commodity. The FSIS Guidelines also include recommendations for loading and unloading facilities, loading and unloading procedures, in-transit procedures to prevent contamination or adulteration, and unloading procedures. Finally, the FSIS Guidelines include recommendations for enhancing food security before, during, and after transportation.

On April 24, 2003, FDA published ''Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices'' (Juice Guidance; 68 FR 20159). The Juice Guidance was developed to assist producers and users to develop measures to prevent, reduce to acceptable levels, or eliminate the risk of contamination or recontamination of juice products during bulk transportation. The guidance describes five major areas of concern with bulk transport systems, special considerations for tankers, and examples of control measures for loading and unloading juice products into tankers. The Juice Guidance recommends that a producer or user conduct a hazard analysis focused on five areas of concern with bulk transport: (1) Sanitation operations, (2) equipment design, (3) equipment maintenance, (4) employee practices, and (5) loading and unloading areas. The Juice Guidance includes recommendations for designing vehicles used for the transportation of bulk amounts of juice products, preventive maintenance programs to ensure proper functioning of equipment and integrity of food contact surfaces, and measures for cleaning and sanitizing tanker trucks used to transport juice. The Juice Guidelines recommend that producers use tankers that are dedicated to the transportation of juice products. The Juice Guidelines also include recommendations for loading and unloading a tanker.

Taken together, the USDA and FDA regulations and implementing guidance adequately address the overarching SFTA goal of protecting food and food products from contamination during transportation. Indeed, the USDA and FDA regulations and implementing guidance address many of the specific provisions of SFTA, including the contamination or adulteration of food with non-food products, identification of vehicles used to transport food and food products, the use of dedicated vehicles, and the design of vehicles used to transport food and food products. Substantive DOT regulations in this area are, therefore, not necessary. Accordingly, in this SNPRM, we propose to reference the USDA and FDA regulations and state that persons who offer for transportation or transport food or food products must comply with the USDA and FDA regulations applicable to such transportation. This approach maintains current food safety

responsibility with the agencies that are best equipped to meet that responsibility. We will continue to work with USDA and FDA to assist them as necessary to assure that food and food products are transported safely. To this end, DOT will establish procedures for transportation safety inspections for the purpose of recognizing suspected incidents of contamination or adulteration of food, and will train DOT personnel in the appropriate use of the procedures. DOT will promptly notify FDA or USDA, as applicable, of any instances of potential food contamination or adulteration identified during safety inspections.

USDA/FSIS and FDA both plan to work with DOT to create a memorandum of understanding to ensure that the agencies work together effectively to assure that the Nation's food supply is safe and secure, particularly in the distribution channels involving transportation. FSIS and FDA will provide practical information regarding their regulations and activities concerning food safety and security. Drawing from vulnerability assessments and technical studies related to food safety and security, FSIS and FDA will work with DOT to develop a program to protect against vulnerabilities. Further, FSIS and FDA will provide guidance to and coordinate with DOT on sharing of significant information resulting from DOT safety inspections. FSIS and FDA will work with DOT to develop standard training for transportation inspectors to enable them to recognize suspected incidents of contamination or adulteration or other potential food safety or security concerns encountered during their inspections and to report these incidents to FSIS or FDA.

In this SNPRM, we propose to add a new Part 121 to Subchapter B of Title 49 of the Code of Federal Regulations. As proposed, Part 121 includes definitions applicable to the transportation of food and food products and states that persons engaged in such transportation must comply with USDA regulations in 9 CFR Parts 1 through 599 and FDA regulations at 21 CFR Parts 1 through 1299.

In addition, in this SNPRM, we propose to include in Part 121 a recommendation that persons engaged in the transportation of food or food products utilize food safety standards and guidelines promulgated by FDA and USDA, including FDA guidance documents on food security applicable to dairy farms and milk processors, food producers and processors, and bulk transporters of juice; and USDA safety and security guidelines for the transportation and distribution of meat, poultry and egg products.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This SNPRM is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was formally reviewed by the Office of Management and Budget. This proposed rule is also significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This proposed rule imposes no new compliance costs on the regulated industry; it merely states that persons who offer for transportation or transport food or food products must comply with current USDA and FDA requirements for such transportation.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The SNPRM imposes no new transportation costs. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Need for the SNPRM. SFTA requires the Secretary of Transportation to promulgate regulations to promote the safe transportation of food products.

Description of Actions. In this SNPRM, we are proposing to state that persons who offer for transportation or transport food or food products in commerce must comply with USDA and FDA regulations applicable to such transportation. In addition, we are including a recommendation that persons engaged in the transportation of food or food products utilize food safety and security standards and guidelines promulgated by FDA and USDA.

Identification of potentially affected small entities. Businesses likely to be affected by the SNPRM are the more than 22,000 establishments that comprise North American Industrial Classification System (NAICS) Group 311, which includes food processors and manufacturers, and the more than 2,300 establishments that comprise NAICS Group 312, which includes beverage processors and manufacturers. In addition, the SNPRM will have an impact on over 43,000 specialized trucking companies (NAICS 48422). Finally, the proposals in this SNPRM will affect approximately 1.9 million farmers and farming operations.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for establishments that will be subject to the proposed sanitary food requirements. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that about 97 percent of food and beverage processors and specialized trucking entities are small businesses. SBA has not established definitions for farms and farming operations. Therefore, we are using the definition used by USDA; USDA defines small farms as those with revenues under $500,000. Using this criterion, about 96 percent of all farms are considered small entities. These entities would incur no increased costs to comply with the provisions of this SNPRM.

Reporting and recordkeeping requirements. This SNPRM includes no new requirements for reporting or recordkeeping.

Related Federal rules and regulations. As noted earlier in this preamble, both USDA and FDA have comprehensive sanitary food regulations and guidelines. Rather than impose new and possibly conflicting requirements, we are incorporating the USDA and FDA standards into the DOT regulations.

Alternate proposals for small businesses. The Regulatory Flexibility

Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of sanitary food transportation, it is not possible to establish exceptions or differing standards and still accomplish the objectives of SFTA.

This SNPRM was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, the SNPRM proposes no new requirements; rather it incorporates existing requirements of other agencies into the DOT regulations.

Conclusion. We conclude that while this SNPRM applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. There are no new compliance costs associated with the proposals in this SNPRM.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This SNPRM imposes no new information collection requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 121

Food, Transportation.

In consideration of the foregoing, we propose to amend subchapter B of title 49, subtitle B, chapter I, as follows:

1. Revise the heading for subchapter B of title 49, subtitle B, chapter I, to read as follows:

Subchapter B—Food Safety and Oil Transportation

2. Add part 121 to subchapter B of title 49, subtitle B, chapter I, to read as follows:

PART 121—FOOD SAFETY REGULATIONS

Sec.
121.1 Purpose and scope.
121.5 Definitions.
121.10 General requirements.
121.15 Use of guidance documents and material.

Authority: 49 U.S.C. 5701–5714; 49 CFR 1.53.

§ 121.1 Purpose and scope.

This part prescribes requirements for persons who offer for transportation or transport food and food products by rail car or motor carrier in commerce.

§ 121.5 Definitions.

For purposes of this part:

FDA means the Food and Drug Administration of the U.S. Department of Health and Human Services.

Food and *Food product* have the same meanings as in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used on the highways for the transportation of passengers or property.

Person means an individual, firm, copartnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative) that offers for transportation or transports food or food products in transportation.

Rail car means a car designed to carry freight by rail and includes a box car, flat car, gondola car, hopper car, or tank car.

Transports and *Transportation* mean any movement of property in commerce by motor vehicle or rail car.

USDA means the U.S. Department of Agriculture.

§ 121.10 General requirements.

No person may offer for transportation or transport food or food products by motor vehicle or rail car except in conformance with applicable requirements governing such transportation in 9 CFR parts 1 through 599 and 21 CFR parts 1 through 1299.

§ 121.15 Use of guidance documents and material.

Each person who offers for transportation or transports food or food products by motor vehicle or rail car should utilize guidance documents and materials promulgated by FDA and USDA, including, but not limited to: FDA Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices; FDA Guidance on Food Security Preventive Measures for Food Producers, Processors, and Transporters; FDA Guidance on Food Security Preventive Measures for Diary Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations, and Fluid Milk Processors; and USDA Food Safety and Inspection Service Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products.

Issued in Washington, DC, on December 16, 2004, under authority delegated in 49 CFR 1.53(i).

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–27904 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT96

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Sacramento Mountains Checkerspot Butterfly as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule published in the **Federal Register** on September 6, 2001 (66 FR 46575), to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (butterfly) as endangered with critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). This withdrawal is based on our conclusion that the threats to the species as identified in the proposed rule are not as significant as earlier believed. We base this conclusion on our analysis of current threats. We find that best scientific and commercial data available indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, have been reduced below the statutory definition of threatened or endangered. Therefore, we are withdrawing our proposal to list the species as endangered.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Field Supervisor, New Mexico Ecological Services Field Office (telephone 505–761–4706, facsimile 505–346–2542).

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to this final listing determination. For more information on the butterfly, refer to the September 6, 2001 (66 FR 46575) proposed rule, and the October 7, 2004 Conservation Plan (69 FR 60178). However, some of this information is discussed in our analyses below, such as the summary of factors affecting the species.

Previous Federal Action

On January 28, 1999, we received a petition from Mr. Kieran Suckling of the Southwest Center for Biological Diversity in Tucson, Arizona, dated November 1998, which requested that we emergency list the butterfly as endangered. The petitioner stated that the species merits listing because of its restricted range, adverse impacts resulting from a proposed United States Department of Agriculture Forest Service (Forest Service) land transfer, improvements to a Forest Service campground, construction of homes and other structures, aggressive nonnative weeds that may be affecting the larval food plants and adult nectar sources, climate change, and livestock overgrazing. The petitioner requested emergency listing due to the perceived immediate threats to the species' continued existence from a proposed land transfer between the Forest Service and the Village of Cloudcroft in the Sacramento Mountains in Otero County, New Mexico.

In accordance with section 4(b)(3)(A) of the Act, we published notice of our 90-day administrative finding in the **Federal Register** on December 27, 1999 (64 CFR 72300), that the petitioner presented substantial information indicating that listing may be warranted, but that emergency listing was not warranted, and commenced a status review. No further action was conducted related to the listing of the butterfly following the publication of the December 27, 1999 finding.

In response to our failure to make a 12-month finding within the statutory time frame allowed by the Act, the Center for Biological Diversity filed a lawsuit. On July 31, 2001, the United States District Court for the District of New Mexico, in *Center for Biological Diversity* v. *Gale A. Norton,* CIV 01–0258 PK/RLP ordered us to complete and submit for publication to the **Federal Register** a 12-month finding for the butterfly within 30 days. On September 6, 2001, we published a proposed rule to list the butterfly as endangered with critical habitat (66 FR 46575). The proposed rule constituted our 12-month administrative finding. As part of the rulemaking process, we also held one public hearing in Alamogordo, New Mexico, on October 18, 2001, and extended the public comment period until December 5, 2001 (66 FR 49158, September 16, 2001). We invited all interested parties to submit comments on the proposed listing rule and proposed critical habitat designation.

In the proposed rule, we determined that the butterfly was in danger of extinction throughout all or a significant portion of its range because much of the remaining suitable habitat and the long-term persistence of the subspecies were threatened. At that time, the known threats included: Commercial and private development, Forest Service projects, fire suppression activities, highway reconstruction, off-highway vehicle use, and overgrazed range conditions. Additional background information is available in the September 6, 2001, proposed rule (66 FR 46575).

In response to growing interest by the local community to conserve the butterfly, the Service began coordination in 2001 with local and Federal partners. Subsequently, we developed the ''Conservation Plan for the Sacramento Mountains Checkerspot Butterfly'' (Conservation Plan) (see ''Conservation Plan'' section below). The Conservation Plan was available for a 30-day public comment period and documents conservation actions that will benefit the species (69 FR 60178, October 7, 2004). We also held a public information meeting in Cloudcroft, New Mexico, on October 13, 2004.

On November 8, 2004, we announced the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the butterfly (69 FR 64710). Section 4 (b)(2) of the Act requires that we consider economic impacts, impacts to national security, and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Summary of Comments and Recommendations

In the notices announcing the public comment periods, we requested all interested parties submit comments on the proposed listing and critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment, and information pertaining to the Conservation Plan or management actions that reduce the threats to the butterfly, current status, ecology, distribution, threats, and management/conservation efforts in place. We requested this information in order to make a final listing determination based on the best scientific and commercial data currently available. During the public comment periods, we received written comments from a total of 40 entities, and 22 speakers gave verbal

comments at the public hearing. Substantive information provided in all public comments, written and verbal, either has been incorporated directly into this withdrawal or is addressed below. Similar comments are grouped together by issue.

(1) *Comment:* Commercial and private development is not a threat to the species, because very little is occurring within the range of the butterfly.

Our Response: The economic analysis found that in recent years, approximately 8 to 10 new homes have been constructed annually within the boundary of the proposed critical habitat designation. This trend is expected to continue into the foreseeable future. Based upon this estimate, over the next 20 years, approximately 160 to 200 small-scale residential projects may occur within the boundary of proposed critical habitat for the butterfly. Of these, the economic analysis assumed that 55 to 69 may conduct butterfly surveys because they would be conducted within areas that were proposed as critical habitat and provide butterfly habitat. Eight to 24 of those areas surveyed may be found to be in use by butterflies (for a detailed discussion see Service 2004). This draft economic analysis estimated that the median lot size of these developments was 0.14 hectares (ha) (0.34 acres (ac)), indicating that up to 3.2 ha (8 ac) of suitable butterfly habitat may be impacted from commercial and private development activities (Service 2004). In the proposed rule, we described an additional 4 ha (10 ac) of impacts from a private development on the east side of the Village of Cloudcroft. Thus, we estimate that about 1 percent of the suitable butterfly habitat on private lands (i.e., 18 of 1,196 ac) may be subject to commercial and private development. We do not believe that this level of an impact is a significant threat to the butterfly (see ''Summary of Factors'' section below for a more detailed discussion).

(2) *Comment:* There is no evidence that exotic weeds have any effect on butterfly populations. How is listing the butterfly going to help solve the exotic weed problem?

Our Response: Nearly 30 percent of mountain meadows and over half of some individual meadows were dominated by noxious weeds on the Sacramento Ranger District in 1995 (Forest Service 1995). In 2002, the Forest Service conferenced with us regarding a District-wide noxious weed management program. Under this action, the Forest is using manual methods (e.g., spot applications) to remove noxious weeds within habitat occupied by the butterfly. We anticipated some impacts to host plants will occur, but these were expected to be insignificant (i.e., should never reach the level where incidental take of the butterfly will occur) or discountable (i.e., effects to the butterfly from the action are extremely unlikely to occur) to the butterfly. The Sacramento Ranger District is currently monitoring and treating infestations of nonnative vegetation. These actions have long-term benefits for the butterfly because the threat of nonnative vegetation to the butterfly has been minimized.

(3) *Comment:* If global warming is really a threat to the butterfly, are you going to get the whole planet to change its habits to protect this one butterfly?

Our response: We agree that we cannot address an issue of this magnitude and complexity on a species by species basis. However, we recognized in the proposal that the butterfly may be vulnerable to changes in climate. We also note that this does not imply that the species cannot survive natural events such as drought since the butterfly evolved in an environment subject to periodic atypical weather events.

When a species has specific and limited habitat requirements, it is reasonable to assume that climate shifts occurring more rapidly than evolutionary timeframes might have an impact on the species in the future. Even if we cannot address these issues on a species by species basis, we believe it is important, where possible, to document the extent of any problems, to spur research or collaborative solutions. The U.S. Geological Survey (USGS) and the Service recently launched our Future Challenges Project with a scientific workshop at the National Conservation Training Center. At this workshop, we explored four environmental drivers that will affect our work and missions in the future. We examined the issues of water resources, invasive species, climate change, and biotechnology for their potential long-term impacts in managing biological resources and the systems that support them over the next 10 to 20 years. For example, we know the importance of coordinating research, monitoring, and risk assessment efforts so that human and financial resources are used effectively and directed at the highest priority needs. Closely related is the importance of accessing and sharing research and results so that the best information available is used by all decision-makers.

(4) *Comment:* If listing the butterfly makes it more vulnerable to collection, then why list the subspecies?

Our response: As part of our analysis under section 4(a)(1) of the Act, we disclose and analyze the known or potential threats to species and any related information. In the case of the butterfly, we acknowledged that listing can increase the publicity and interest in a species' rarity, and thus may directly increase the value and demand for specimens. To limit potential overcollecting, the Forest Service issued a closure order restricting the collection of any butterflies without a permit on the Smokey Bear and Sacramento Districts of the Lincoln National Forest (Forest Service 2001). The Forest Service posted the closure order in accordance with their regulations and also published a notice of the closure order in the newsletter of the Lepidopterists' Society (36 CFR 261, Lepidopterists' Society Newsletter 1999, Holland 1999) (see discussion under ''Factor B'' below).

(5) *Comment:* Based upon the fact that one of the only butterfly pupa ever found was attached to the side of a building, it does not appear that developments are a threat to the subspecies.

Our response: The building where the pupa was found occurs in an area where butterfly habitat adjacent to the building was largely intact and is being used by the butterfly. Based on this and other information we have reviewed (see ''Factor A'' section below), it appears that private and commercial development activities can be conducted in such a way as to minimize impacts on the butterfly. For example, the Forest Service has found that the butterfly continues to exist within areas that are developed (Forest Service 2004e).

(6) *Comment:* Recent studies have shown that the butterfly's population and range are actually much larger than previously thought. There is no evidence that the range of the butterfly is shrinking.

Our response: As we noted in the 2001 proposed rule, the Forest Service has been conducting surveys since 1998 to estimate the range of the butterfly. The known range of the butterfly has not been extended since 2000 (Forest Service 2002). We do not have long-term monitoring data to evaluate whether the butterfly's population is increasing, stable, or declining. Still, on a gross scale, our observations indicate that the range of the butterfly has not changed since 2000 (Forest Service 2002b). The Forest Service and Service will continue

to monitor the butterfly population and range (Service 2004b).

(7) *Comment:* No studies have been conducted in the adjacent Mescalero Apache Nation lands, where there could be large numbers of butterflies in their plentiful meadows. The Village of Cloudcroft comments state they have spoken with ''at least two officials from the Mescalero Indian Reservation who assume the butterfly is found on the Mescalero Indian Reservation.''

Our response: We have no information to be able to verify the information that the butterfly is found on the Mescalero Apache Nation lands (see ''Mescalero Apache Nation'' section below). We have provided technical assistance to the Mescalero Apache Nation through field identification and survey techniques that we conducted on Forest Service lands. We offered assistance to the Mescalero Apache Nation in conducting surveys. However, we have no knowledge that there is any occupied butterfly habitat on Mescalero Apache Nation lands or that surveys have ever been completed there.

(8) *Comment:* There is no compelling information that the butterfly's population has been reduced.

Our response: We have no evidence that the butterfly's population is declining (see also comment number 6). Section 4(b)(1)(A) of the Act requires us to make listing determinations on the basis of the best scientific and commercial data available. In this final listing determination, we are withdrawing the proposal to list the butterfly as endangered based upon our analysis of the current threats and our conclusion that the butterfly no longer meets the definition of threatened or endangered.

(9) *Comment:* Both adult and larval foodplants for the butterfly are common and abundant throughout its range. There is no information to indicate that the foodplants are declining from any threats.

Our response: We agree that adult foodplants are common. Larval foodplants have been impacted in some areas, but do not appear to be the sole determinant of the presence or abundance of the butterfly (Pittenger *et al.* 2001). Our current understanding of the threats to the butterfly and its foodplants is fully described under the ''Summary of Factors Affecting the Species'' section below.

(10) *Comment:* The Service needs to conduct an analysis under the National Environmental Policy Act (NEPA) for the listing of the butterfly.

Our response: While we are not required to complete an analysis under NEPA for the listing of the butterfly, we did however, complete a draft environmental assessment under NEPA on the proposed designation of critical habitat, and released it for public comment on November 8, 2004 (69 FR 64710). We believe that this issue is no longer relevant because we are withdrawing our listing proposal.

(11) *Comment: Euphydryas anicia cloudcrofti* is not a unique species or subspecies and was only referred to as *cloudcrofti* for regional identification purposes.

Our response: We disagree. *Euphydryas anicia cloudcrofti* is recognized as a distinct taxonomic subspecies that is a listable entity under the Act if it were to meet the definition of threatened or endangered (16 U.S.C. 1532(16)). The subspecies was isolated by post-Pleistocene climate changes and subsequent changes in the distribution of plant communities (Pittenger and Yori 2003). This spatial isolation resulted in a unique variation that is locally adapted and recognized as a distinct subspecies (Pittenger and Yori 2003, Pratt 2001, Toliver *et al.* 1994, Cary and Holland 1992, Ferris and Holland 1980).

(12) *Comment:* The scientific record indicates there was a specimen found 282 kilometers (km) (175 miles (mi)) north of the Village of Cloudcroft that was identified as this butterfly. The specimen might have been mislabeled, but should be looked into.

Our response: Holland and Ferris (1980) stated that, ''There is a single male of *cloudcrofti* in the American Museum of Natural History collection (O. Buchholz Collection) labeled ''Beulah, New Mexico VI.27.02''. Beulah was a former settlement in the Sapello Valley, San Miguel Co., N.M., some 282 kilometers (km) (175 miles (mi)) north of the Village of Cloudcroft. We suspect that this specimen was mislabeled and actually came from the Cloudcroft area.'' Toliver *et al.* (1994) and Cary (2003) document an undescribed subspecies of *Occidryas* (= *Euphydryas*) *anicia* collected in San Miguel County, New Mexico, in 1882, 1901, 1902, 1949, and 1954. It was also observed in Mora County, New Mexico, in 1995 (Toliver *et al.* 1994) and 2003 (Cary 2003). We conducted surveys within Mora County in 2003 and 2004 during the presumed active season. In 2003, adult butterflies of this undescribed subspecies were photographed by Cary (2003) in Mora County, although New Mexico penstemon (*Penstemon neomexicanus*) or orange sneezeweed (*Helenium hoopesii*), the primary foodplants of the butterfly, have not been observed. We suspect that if the undescribed subspecies still occupies the area, it occurs at very low densities.

Pratt (2000, 2001), who conducted extensive surveys throughout New Mexico, including the Sacramento Mountains (Pratt 2001a, 2001b, 2001cF), found that the butterfly is highly isolated from other populations of *Euphydryas anicia* and, after reviewing the taxonomic relationships within *Euphydryas* described by Brussard *et al.* (1989), he believes that *cloudcrofti* may be its own separate species. Genetic studies have not been conducted between *cloudcrofti* and other *Euphydryas anicia* populations, including the undescribed subspecies in Mora County, New Mexico. Because the known foodplants of the Sacramento Mountains checkerspot butterfly have not been documented outside of Otero and Lincoln Counties, we do not believe that the undescribed subspecies is the same as the Sacramento Mountains checkerspot butterfly. This conclusion is consistent with previous interpretations of other lepidopterists who are familiar with and have observed these butterflies (Toliver *et al.* 1994, Holland and Ferris 1980).

(13) *Comment:* Was the proposed rule peer reviewed?

Our response: Yes. In September 2001, we sent the proposed rule to six peer reviewers. Only one responded; this peer reviewer supported the proposed listing.

(14) *Comment:* Where have butterfly festivals been organized and are there any economic benefits of such festivals?

Our response: We are aware of many butterfly festivals organized across the country. In fact, Mission, Texas, has been holding a festival for eight years (*http://www.texasbutterfly.com/*). Similarly, there are large butterfly festivals in Paris, Arkansas (*http://www.butterflyfestival.com/*), Haynesville, Louisiana (*http://www.claiborneone.org/haynesville/butterfly.html*), and celebrations for listed butterflies such as the Karner blue butterfly festival in Black River Falls, Wisconsin *http://www.downtownblackriverfalls.com/karner_blue_butterfly_fest.htm*). These festivals can draw thousands of participants and provide a large economic benefit to the community.

The Service and the Albuquerque Biological Park organized an overnight trip to Cloudcroft to view the butterfly and other sensitive species. This trip entailed about 20 people staying in The Lodge overnight and visiting local businesses. The Albuquerque Biological Park conservatively estimated that their group spent a minimum of $3,500 in Cloudcroft businesses.

(15) *Comment:* Cattle grazing has occurred for over 100 years in the Sacramento Mountains and is not threatening the butterfly.

Our response: We agree with this statement. Livestock grazing was recognized as a threat to the species in 2001. We have reevaluated this conclusion in light of recent information from the Forest Service and others (*e.g.*, Forest Service 2001, 2004b, 2004i, Service 2004a, 2004b, Weiss 1999). Historic and current levels of grazing are not a significant threat to the species. The potential threat of grazing is further reviewed under the ''Summary of Factors Affecting the Species'' section below. We conclude that current and future levels of grazing have not and will not result in significant adverse effects to the butterfly because grazing monitoring and subsequent management changes (reducing number of livestock, moving to other pastures, etc.) ensure that utilization levels are met and foodplants for the butterfly are being maintained.

(16) *Comment:* The Forest Service indicated that there is no potential risk to the butterfly related to the control of tussock moth (Orgyia pseudotsugata) as it was described in the proposed rule. They stated that any future proposed treatments would need to be analyzed under NEPA, and the suggestion that carbaryl or *Bacillus thuringensis* would be used to control these or other forest insects was premature.

Our response: We agree and have revised our analysis to reflect this new information. See ''Summary of Factors Affecting the Species'' section below for further details.

(17) *Comment:* The Forest Service indicated that all of their activities, including for example wildland urban interface (WUI) treatments, land exchanges, recreational improvements, and special use permits are currently evaluated for effects on the butterfly and its habitat. The Forest Service has implemented these conservation measures through modified project design features, avoidance of the species and/or habitat, or implemented mitigation measures such as surveys or seasonal restrictions. The butterfly and its habitat are receiving adequate protection and management on the Lincoln National Forest as the Regional Forester designated the butterfly a Sensitive Species, and, as such, will continue to be analyzed in all applicable NEPA documents.

Our response: We agree with the comments, and we are withdrawing our proposal to list the species (see ''Summary of Factors Affecting the Species'' section below), in part, due to this effort and designation from the Forest Service.

(18) *Comment:* The Forest Service indicated that the majority of range conditions within meadows used by the butterfly are in satisfactory condition and are providing the necessary host plants for the species. Host plants have likely increased or at minimum remained stable.

Our response: We assumed in our proposed rule that butterfly abundance was related to density of foodplants. Although the presence of foodplants is a necessary component of suitable butterfly habitat, it appears that foodplant density has little influence on number of adult butterflies (Pittenger *et al.* 2001). We agree that range conditions within meadows used by the butterfly are providing the necessary host plants for the species (see ''Summary of Factors Affecting the Species'' section below). It is also unknown why the butterfly is not present in meadows where larval and adult foodplant density is high (Pittenger *et al.* 2001, Pittenger and Yori 2003). Further research is needed to clarify the attributes of butterfly habitat.

(19) *Comment:* Female butterflies lay hundreds of eggs. Therefore, biologically it does not make sense that if a few larvae get crushed by recreation or other activities, it would cause the butterfly population to decline or lead to its extinction.

Our response: We have also reached this conclusion (see our response to Comment 24 below). The proposed rule was a comprehensive document that analyzed a myriad of potential threats. At that time, we indicated the potential significance of many of the impacts had not been quantified. After further evaluation, we believe that the magnitude of each potential threat is a necessary component to accurately evaluate the potential of each threat. The commentor is correct that in a functioning metapopulation, as we believe is the case here, the loss of a few butterflies will not jeopardize the continued existence of the species.

(20) *Comment:* What level of impact triggers an ''adverse effect'' determination for the butterfly from the Service.

Our response: If the species were listed under the Act, the level of impact that triggers an adverse effect determination would be the same as any other species under section 7 of the Act. Federal agencies are required to consult with us under section 7 of the Act when activities with a Federal nexus (*i.e.*, when a Federal agency is funding, permitting, or in some way authorizing a project) may affect a species or its designated critical habitat. The Federal action agency is required to make the determination as to whether their project may affect a species or designated critical habitat. If the anticipated effects from a proposed action are insignificant, discountable, or entirely beneficial, then we concur that the activity is not likely to adversely affect the species or its critical habitat (*i.e.*, an informal consultation). Conversely, those activities that are likely to result in incidental take or adversely affect the species or its critical habitat require formal consultation.

(21) *Comment:* Based upon Forest Service observations following the Scott Able fire in 2000, catastrophic wildfire is not a threat for the butterfly. The species lives in meadows, which are usually little affected from wildfires within mixed conifer fuel type.

Our response: The information from the Scott Able fire indicates that the majority of areas burned were within the mixed conifer forest (Forest Service 2001). Meadows were essentially passed over by this wind-driven fire and did not sustain any high burn intensities (Forest Service 2001). In fact, within the meadows that burned, fire intensities were generally light (Forest Service 2001) (see Factor A below).

Recovery of butterfly populations after fires is a function of the species' ability to gain access to suitable postfire habitats and their ability to rebuild numbers from survivors or colonizers (Swengel 2001). We expect that the effects of fire on butterfly habitat quality and availability will vary based on the severity and spatial configuration of the fire, the response of foodplants to burn severity, and suitability of postfire vegetation. While we have a good understanding of the general factors that influence fire behavior, the way in which a fire behaves on the landscape is highly complex. As a result, fire behavior and severity can be understood and predicted in general terms, but exact predictions are not possible (Forest Service 2004). For example, butterfly habitat quality may either be enhanced or diminished by wildfire. It is probable that a fire of moderate severity could enlarge existing meadows or create suitable corridors between occupied areas.

As described below, the Sacramento Ranger District and surrounding area has been identified as a high-priority area for fuel treatments within New Mexico. As a result, the Lincoln National Forest has increased funding and implemented projects across the Sacramento Ranger District to reduce the threat of wildfire (Forest Service 2001). In their comments, the Forest

Service reviewed the last 50 years of fire activity on the Sacramento Ranger District, the impact of recent fuels-reduction projects, and the potential impacts to meadows from fires. They concluded that the potential impacts to the butterfly from catastrophic wildfire were low (Forest Service 2001). We agree with this conclusion as further explained in the ''Summary of Factors Affecting the Species'' below.

(22) *Comment:* The Forest Service stated that the only road construction project planned within butterfly habitat is associated with campground reconstruction activities.

Our response: We agree and have revised our analysis to reflect this new information.

(23) *Comment:* The Forest Service commented that recent and future developed recreation site rehabilitation projects were conducted to provide for public safety, accessibility, and compliance with the American with Disabilities Act, resource protection, and to improve campground image (color, style, etc). They indicated that the redesign of all campgrounds within meadows will result in a net reduction in camping and picnicking capacity by reducing the number of units (*i.e.*, camp sites and picnic tables).

Our response: We agree and have revised our analysis to reflect this new information.

(24) *Comment:* The Forest Service contends that the annual mountain bike race is a recreational use that does not adversely affect the butterfly because the race occurs in mid-May prior to the growing season of the larval host plants.

Our response: Although we believe that the annual mountain bike race has the potential to adversely affect (and incidentally take) post-diapause larvae, the significance of this threat is considered low. Some larvae may be crushed and killed, but we would expect less than 1 ha (2.4 ac) of occupied habitat (i.e., trails through occupied meadows) to be impacted from this activity to occur, which would not affect the metapopulation dynamics of the species (e.g., the linear nature of trails would not preclude butterfly movement and recolonization) (see ''the ''Summary of Factors Affecting the Species'' below).

(25) *Comment:* Was the model used to estimate the amount of existing butterfly habitat developed by people qualified to do this kind of work? Was the model peer reviewed?

Our response: As noted in the proposed rule, the Forest Service used a Geographic Information System (GIS) to model the extent of existing butterfly habitat (Forest Service 1999b). The model was developed to focus survey efforts within areas thought to provide butterfly habitat. It is our understanding that this model was developed by biologists and cartographers. The information upon which the model was built was identified in the proposed rule. We asked our peer reviewers to review any aspect of the proposed rule, which included the model and estimate of existing butterfly habitat. No one commented on this aspect of the proposal. This model has been refined since 2001 (Forest Service 2004e) (see ''Summary of Factors Affecting the Species'' section below). We consider the refined model to be the best scientific and commercial information available for estimating existing butterfly habitat. As we have found, the model provided no certainty that the potential habitat may be occupied (e.g., the 1999 model overestimated potential butterfly habitat by about 50 percent) (see ''Summary of Factors Affecting the Species'' section below).

(26) *Comment:* The proposed rule states that the construction of roadways is believed to have historically eliminated or reduced the quality or quantity of butterfly habitat, and cites Pittenger (1999). Nowhere in the reference cited is there any discussion or mention of the historic effect of road construction on the quantity or quality of habitat for the butterfly.

Our response: Our analysis used this citation because it documented the impact caused by recent road construction activities on the quantity and quality of butterfly habitat. On October 27, 2004, we visited this area and found that foodplants have naturally been reestablished during the 2004 growing season. Based upon our observation of a recently colonized site (Service 2004d), we believe the area impacted from the recent road construction activities may be utilized by the butterfly as soon as next year (see ''Summary of Factors Affecting the Species'' section below).

(27) *Comment:* Erroneous information is provided in the proposed rule regarding the severity of impacts of the New Mexico Highway 130 reconstruction project at Deerhead Campground. The project did not result in the extirpation of the butterfly from Deerhead Campground, because it still exists in the area.

Our response: The proposed rule did not state that butterflies were extirpated from Deerhead Campground. The rule identified that in 1998 and 1999, butterflies were located within the construction footprint (Forest Service 1999a, 1999b; 1999d.); however, none were observed during surveys in 2000 and 2001. No butterflies have been observed within the construction footprint since 1999. However, the commentor is correct, in that, butterflies are still occupying other parts of Deerhead Campground. As noted above in our response to comment 26, this area has been naturally revegetated with foodplants during 2004.

(28) *Comment:* There is little to no evidence to back the claim in the proposed rule that overgrazing has occurred in the valleys of the Sacramento Ranger District of the Lincoln National Forest over the last several decades.

Our response: Much of the information we reviewed in 2001 was from the Sacramento Grazing Allotment. We had assumed in the proposed rule that the continuing heavy grazing (i.e., above 35 percent forage utilization) on this allotment was impacting the butterfly. However, further examination of information from the Forest Service demonstrated that the butterfly and its proposed critical habitat are only found within a portion of the Nelson Pasture on the summer unit of the Sacramento Allotment, which does not receive any cattle use because of topography and lack of water (Service 2004a). For the other allotments within the range of the butterfly, we conclude that current and future grazing will not result in significant adverse effects to the butterfly because the Forest Service ensures that utilization levels are met and foodplants are maintained (see ''The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range'' section).

(29) *Comment:* Has New Mexico penstemon (*Penstemon neomexicanus*) been found outside the geographic range of the butterfly?

Our response: Yes. There are areas (e.g., Russia Canyon and Rawlins Canyon) where New Mexico penstemon is locally common, but are apparently unoccupied by the butterfly since it has not been located during surveys in these areas (Pittenger et al. 2001, Forest Service 2000, 2000a, Bleakly 1998, 1999). Additionally, the butterfly's host plants are known to occur within portions of the Smokey Bear Ranger District, in the vicinity of Ruidoso, New Mexico, just north of Mescalero Apache Nation lands (Forest Service 2000a). However, the butterfly has not been documented north of the Sacramento Ranger District (Forest Service 2000a).

(30) *Comment:* The information submitted in the proposed rule does not comply with the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Dissemination by Federal

Agencies issued by Executive Office of the President, Office of Management and Budget (OMB) (Information Guidelines) (66 FR 49718).

Our response: These guidelines require that agencies issue their own quality guidelines to ensure objectivity, utility, and integrity of information to be disseminated (66 FR 49718). The proposed rule was published prior to the October 1, 2001, effective date of the Information Guidelines. However, we used the best scientific and commercial data available in the formulation of our proposed rule as required by the Act. Additionally, we have reviewed this final determination and the rulemaking process that we have followed for this action relative to the current guidelines and have determined that this determination is in compliance with the parameters established therein.

(31) *Comment:* We received a variety of comments regarding the proposed critical habitat, the draft economic analysis, and draft environmental assessment.

Our response: Because we are withdrawing the proposal to list the butterfly, we are no longer proposing critical habitat for this subspecies. As such, the draft economic analysis and draft environmental assessment are no longer applicable, and we are not addressing comments on those documents in this determination.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The following analysis examines the listing factors and their application to the butterfly. Within this section we evaluate new data received since the proposed rule, projects that were completed since 2001, and the related conservation measures that reduce present and future threats to the species.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Several categories of activities have the potential to affect the butterfly and its habitat, including commercial and private development, Forest Service activities, fire suppression and wildfire, highway and forest road reconstruction, recreational impacts, domestic livestock grazing, and nonnative vegetation. This section of the rule presents information for each of the factors affecting the butterfly and its habitat, followed by a summary of how formalized conservation efforts eliminate or reduce adverse effects.

Commercial and Private Development

In 2001, commercial and private development was identified as a significant threat to the butterfly (66 FR 46575). The butterfly likely occupies a significant amount of private lands since habitat used by the butterfly occurs on Forest Service land that is immediately adjacent to these areas and the elevational and habitat characteristics are contiguous (Forest Service 2000a, 2004e).

The proposed rule estimated that there were less than 2,104 ha (5,198 ac) of potential butterfly habitat, composed of 1,034 and 1,070 ha (2,553 and 2,645 ac) on private and Forest Service lands, respectively. A refinement of the original data was conducted by the Forest Service in 2004 (Forest Service 2004e). These current data are similarly based upon focused surveys to ground truth the 1999 GIS model that we detailed in our proposed rule, but include only those lands within the proposed critical habitat boundary. Nevertheless, we are not aware of any butterfly occurrences outside of the previously known range of the butterfly, which was fully enclosed in the proposed critical habitat boundary. The refined estimate is that 1,096 ha (2,709 ac) of suitable butterfly habitat exist on Forest Service and private lands, with 484 ha (1,196 ac) occupied by the butterfly on Forest Service lands and 314 ha (777 ac) occupied on private lands (Forest Service 2004e). About 298 ha (736 ac) of the 1,096 ha (2,709 ac) of suitable habitat are unoccupied, with 79 ha (194 ac) on Forest Service lands and 219 ha (542 ac) on private lands (Forest Service 2004e). This current estimate is the best information we have regarding the range and distribution of the butterfly.

We also mapped meadows within the mixed-conifer forest at approximate elevations between 2,450 and 2,750 meters (8,000 to 9,000 feet) elevation on the Mescalero Apache Nation lands, but have no data to indicate whether these lands are occupied by the butterfly (see ''Mescalero Apache Nation'' section below). As detailed in response to comment 7 above, we have no knowledge that surveys have ever been completed there.

Our economic analysis found that in recent years, approximately 8 to 10 new homes have been constructed annually within the known range of the butterfly, which includes lands within the limits of the Village of Cloudcroft and areas outside these limits in Otero County (Service 2004). Although development is no longer being encouraged by the Village of Cloudcroft due in part to the lack of water for residential use (Service 2004b, Village of Cloudcroft 2001), there are two existing subdivisions with developable lots available (Service 2004). The economic analysis estimated that over the next 20 years, approximately 160 to 200 small-scale residential projects may occur within the butterfly's critical habitat boundary. Of these, 8 to 24 private lots within the range of the butterfly (i.e., the Village of Cloudcroft or Otero County) may be found to be in use by butterflies (Service 2004). These estimates, in conjunction with the median lot size of 0.14 ha (0.34 ac), indicates that up to 3.2 ha (8 ac) of suitable butterfly habitat may be impacted from commercial and private development activities over the next 20 years (Service 2004). In the proposed rule, we identified that a subdivision on the east side of the Village of Cloudcroft was currently developing and eliminating approximately 4 ha (10 ac) of suitable, and likely currently used, butterfly habitat. Depending on the location and configuration of each development, these activities have the potential to threaten the butterfly. Nevertheless, this amount is not a significant threat to the butterfly because it represents about 1 percent of the suitable butterfly habitat on private lands (i.e., 7.3 of 484 ha (18 of 1,196 ac)).

In the proposed rule we stated that a 9-hole golf course was being discussed as a community recreational goal and objective for the Village of Cloudcroft in 2005 (Cloudcroft Area Sustainability Team 1995). Based upon comments related to the proposed rule from the Village of Cloudcroft (2001), we found that this information is not accurate. The Village's view on development has changed, due in part to a lack of groundwater (Service 2004b). For example, in August 2004, a water crisis was declared in Cloudcroft and drinking water was being hauled to the Village (Shinabery 2004a, 2004b). They no longer intend to develop a golf course (Village of Cloudcroft 2001, Service 2004b).

Since the proposed rule, we have also received updated information on the Village of Cloudcroft land transfer, which is located in areas adjacent to the Village. In the proposed rule, we found that the land transfer would provide additional land for commercial, industrial, educational, and recreational expansion for the Village of Cloudcroft, further degrading or eliminating suitable

habitat and restricting the movement of butterflies between local populations. The Forest Service has completed NEPA compliance and signed a decision notice to allow the Village of Cloudcroft to purchase 33 ha (81 ac) of National Forest lands pursuant to the Townsite Act (Forest Service 2001a, 2001b). The land transfer includes five parcels of land totaling 33 ha (81 ac). Within these parcels butterflies have been observed in parts of parcels 3, 4, and 5. The portion of these parcels that is considered to be butterfly habitat amounts to about 1.2 ha (3 ac) of the 33 ha (81 ac) being offered to the Village (Forest Service 2001a, 2001b, Service 2004, 2004d). The remaining 32 ha (78 ac) are currently not suitable butterfly habitat (Forest Service 2001a, 2001b). To date, the Village has not purchased the five parcels of land; however, the majority of these parcels are intended for use as greenbelts and buffers and not development as we had described in our proposed rule (Forest Service 2001a, 2001b, Service 2004b). The use of these areas as greenbelt would be consistent with the Village of Cloudcroft's local zoning regulations related to open space. The Village of Cloudcroft's Village Code document (Chapter 7 of the Village Code—Greenbelt Zones Use Regulations G–1 Zone), states that Greenbelt Zones shall consist of open space with no structures or commercial signs allowed (Service 2004). In addition, the zoning regulations prohibit overnight parking or camping within greenbelt zones. The Village of Cloudcroft has stated its intention to keep all new land annexed from the Forest Service as greenbelt (Service 2004b). It is our understanding that greenbelt areas are not generally mowed by the Village of Cloudcroft (Forest Service 2004f). Because of the small scale of potential impacts involved in this land transfer (less than 1.2 ha (3 ac)), the new information on the species' ability to recolonize areas (see discussion on the edges of the football field below), and the intention to keep these parcels as greenbelt, we now conclude that the incremental impact of this land transfer when added to other past, present, or reasonable foreseeable future actions (i.e., cumulative effects) on the butterfly's long-term persistence is not significant.

The history of habitat occupied by the butterfly (e.g., Deerhead Campground, Pines Campground) could be characterized by frequent, often major, impacts to soils and vegetation. For example, impacts from logging operations and infrastructure were historically present throughout the Sacramento Mountains (Kaufmann et al. 1998, Glover 1984). In fact, a railroad was constructed in June 1900 and operated until 1947 through the area where present-day Deerhead Campground is located (NMSHTD 2001; Glover 1984). The butterfly continues to be found at this locality. Thus, it appears that the butterfly and its foodplants can tolerate a certain amount of natural and man-made disturbances.

We previously identified that heavy clearing or mowing of native vegetation on improved (i.e., with existing structures) or unimproved private lands, to reduce the threat of wildfire or improve the residential appearance, could eliminate larval or adult food plants and/or localities that are used by the butterfly. Additionally, we found that the conversion of native landscapes to nonnative vegetation (e.g., lawns or gardens) could fragment butterfly localities, eliminate movement corridors, and cause additional loss of suitable habitat (Wood and Samways 1991, Holland 2001). Although these activities have the potential to reduce blocks of native vegetation to fragments, creating a matrix of native habitat islands, we have no specific information to conclude that these activities are significantly threatening the butterfly.

The Village of Cloudcroft is situated on approximately 324 ha (800 ac), and is surrounded by National Forest lands (Forest Service 2001b). The character of the Village is largely residential, with cabins, houses, and business serving the local vacation and tourist-based economy. Within the butterfly habitat of the Village of Cloudcroft, the native vegetation is generally not cleared or mowed because it adds to the rustic charm of the area. The New Mexico State Highway Transporation Department (NMSHTD) is responsible for maintaining the rights-of-way within Highways 82, 244, and 130. Much of the potential butterfly habitat within these rights-of-way is too steep for mowing or mowing is not needed (Forest Service 1999b). The NMSHTD generally occurs outside of the known range of the butterfly Dry Canyon eastward to Mayhill, but may occasionally mow the vegetation within the known range of the butterfly adjacent to Highways 82, 244, and 130, if the rights-of-way are not too steep (Forest Service 1999b, 2004f). The Forest Service found there are at least 3 areas within the Village of Cloudcroft that are occupied by the butterfly, including the edges of the existing golf course, residential areas along the southeast, and adjacent to Highway 82 (Forest Service 2004e). As noted below, we found another area (i.e., the edges of the football field) that was not butterfly habitat and had been recently cleared of trees, has been colonized this year (Service 2004d). This has been reported elsewhere for butterflies in the genus *Euphydryas* (Ehrlich and Hanski 2004). For example, freshly created habitats on road verges, railway embankments, and wide forest tracks (associated with timber extraction) have been colonized by many species of butterfly (see Thomas 1994). These areas are likely to provide connectivity through ''stepping stones'' to other occupied butterfly localities (Thomas et al. 1992).

Recently, we also found that butterfly habitat has been created adjacent to a football field that was part of a 1996 land purchase (Service 2004d, Forest Service 2001a, 2001b). In an area adjacent to the football field that was previously forested and not considered butterfly habitat (Forest Service 2001a), we found larvae in diapause. During surveys in October 2004, we found New Mexico penstemon and valerian (*Valeriana edulis*) growing abundantly throughout the area and, based upon the presence of larvae, conclude that reproduction occurred in this area during 2004 (Service 2004d). This indicates that larval foodplants were naturally reestablished following forest clearing and soil disturbance. The butterfly subsequently colonized the area. This information demonstrates the resiliency of the butterfly and its footplants, and their ability to colonize new habitat. Based upon our assessment of these data, it appears that habitat connectivity is still provided through much of the land within the range of the butterfly. Thus, heavy clearing or mowing of native vegetation cannot be considered a significant threat presently or in the foreseeable future.

Summary

As evidenced by the foregoing discussion of occupied butterfly habitat on private lands within the Village of Cloudcroft and Otero County, it has been demonstrated that the butterfly can co-exist within developed areas. The potential threat to the butterfly from private and commercial development is not as significant as we originally believed. For example, we estimate that no more than 7.3 of 484 ha (18 of 1,196 ac) of suitable butterfly habitat on private land have the potential to be impacted from development activities. The Village of Cloudcroft will also continue to follow their greenbelt zoning regulations, thus limiting potential impacts within butterfly habitat on newly purchased/acquired land. This new information indicates commercial and private development is

no longer a substantial threat to the species currently or in the foreseeable future within the Village of Cloudcroft and Otero County.

Forest Service Activities

In the proposed rule we concluded that those Forest Service projects listed below, that are within the known range of the butterfly, had the potential to adversely affect the butterfly. Since the time of the proposal, the Forest Service has eliminated some proposed projects (*e.g.*, the construction of a new administrative building) in habitat used by the butterfly (Forest Service 2001, 2003a). They have also taken actions to protect and manage the butterfly, including instituting a butterfly closure order (see discussion below), fencing occupied butterfly habitat, and conducting butterfly surveys to determine range and occupancy (Forest Service 1999a, 1999b, 1999h, 2000a, 2000d, 2004). These actions have eliminated or lessened threats to the species and have been beneficial for increasing our knowledge of this species.

Below, we provide a brief summary of projects that have gone through conferencing as required for proposed species under section 7 of the Act. The next section includes an update to those projects previously identified as threats to the species: (1) The capital improvement projects for three campgrounds; (2) a new power line, service road, and corridor; (3) livestock grazing activities in several allotments, one of which (Sacramento Allotment) encompasses over 44,921 ha (111,000 ac); (4) a land transfer to the Village of Cloudcroft, which was analyzed above; and fire suppression and wildfire.

We have a good history of conferencing with the Forest Service under section 7 of the Act on activities that may affect the butterfly. Thus, we can describe the kinds of actions that have undergone informal and formal conferencing. For example, we have found that many potential threats anticipated in the proposed rule resulted in insignificant and discountable effects for the butterfly (Service 2002, 2004a). These include: noxious weed management, reconstruction of Fir Campground, some wildland urban interface fuels management projects, and construction of the new Forest Service administrative building (Service 2002, 2003a, Forest Service 2003a). Additionally, the majority of formal conferences that have anticipated incidental take of butterflies have found that short-term impacts will occur, but the overall project will result in long-term benefits for the species (Rio Peñasco II, Pines Campground reconstruction), or that impacts to occupied habitat will not affect the metapopulation dynamics of the species (Service 2001a, 2002b, 2002c, 2004e).

To date, six projects have undergone formal conferencing for the butterfly and its proposed critical habitat. The projects with anticipated take include: (1) Cloudcroft Water Wells (2–22–02–F–012; 1.5 ha (3.7 ac) of occupied habitat impacted); (2) Genetics Study (2–22–02–F–667; 100 pre-diapause larvae collected); (3) Mark-release movements study (2–22–02–F–470; 15 adult butterflies harmed, unlimited number harassed); (4) Rio Peñasco II vegetation management project (2–22–02–F–397; 14.7 ha (36.4 ac) of occupied habitat impacted); (5) Pines Campground Reconstruction project (2–22–03–F–0061; 4.2 ha (10.5 ac) of occupied habitat impacted); (6) Village of Cloudcroft Apache and Powerline water wells (2–22–04–F–721; less than 1.2 ha (3 ac) of occupied habitat impacted). We are also currently conferencing on two additional projects: (1) The reinitiation of the Rio Peñasco II vegetation management project that will likely impact an additional 13 ha (33 ac) of occupied butterfly habitat; and (2) a proposed elk study that will impact about 2.4 ha (6 ac) of occupied habitat. In all of our conferences, we concluded that the actions, as proposed, were not likely to jeopardize the continued existence of the butterfly and are not likely to destroy or adversely modify proposed critical habitat.

Campground Projects

In 1998, recreation managers and engineers of the Lincoln National Forest and the Forest Service's Southwest Regional Office reviewed improvements needed throughout existing developed campgrounds of the Sacramento Ranger District. In 1998, all phases of the district's recreation improvement proposal were submitted for funding under the Recreation Capital Improvement Program (Forest Service 2003b). As described below, three of the four phases have been completed (Pines, Fir, and Silver, Saddle, and Apache Campgrounds).

Pines Campground located near the Village of Cloudcroft contains one of the largest known concentrations of the butterfly. Reconstruction activities in this campground were completed following formal conferencing (Service 2002a). We found that the implementation of this project, along with the conservation measures, will likely result in short-term adverse impacts to the butterfly and its habitat, but will ultimately reduce the long-term recreational impacts to the species and its habitat in this locality (Service 2002a). For example, the capacity of the campground has been significantly reduced, indicating that potential recreational impacts have decreased. The construction of retaining walls, fencing, and signs, the enforcement of areas not open to camping, and the installation of a barrier across the butterfly habitat has resulted in long-term benefits for the species (*e.g.*, the impact of trampling of foodplants and crushing of larvae has been reduced). For these reasons, we believe that the reconstruction of Pines Campground did not disrupt the metapopulation dynamics of the butterfly (Service 2003). Because these activities were completed during 2004 (Service 2004d), this action no longer threatens the butterfly.

The Fir Campground Capital Improvements Project underwent informal conferencing and resulted in a letter of concurrence (Service 2002). This project also redesigned the group camping area and paved the existing road. The Forest Service flagged and avoided butterfly locations during project construction. Additionally, a boundary fence was constructed to reduce long-term recreational and visitor impacts to butterfly habitat in the area. This action was completed in summer 2002 and no longer threatens the butterfly.

Silver, Saddle, and Apache Campgrounds were reconstructed during the summer of 2001 (Forest Service 2000). The Forest Service conducted butterfly surveys and did not locate any individuals; consequently, the Forest Service determined that no threatened, endangered, or sensitive species would be adversely affected (Forest Service 2000). Because this action was completed, it no longer threatens the butterfly.

Under phase 4, the Forest Service is currently finalizing a proposal to reconstruct the remaining 5 campgrounds (Sleepy Grass, Black Bear Group, Aspen Group, Deerhead, and Slide Group) that are occupied by the butterfly (Forest Service 2003b, 2004i). We toured the five campgrounds on October 27, 2004, and discussed aspects of the proposal. For the final five campgrounds slated for renovations, the Forest Service's draft environmental analysis evaluates three alternatives: A no action and two action alternatives (Forest Service 2004i). Both action alternatives incorporate measures to minimize impacts to the butterfly, although one alternative will protect more butterfly habitat through the placement of camp and day use sites in areas that are not butterfly habitat (*e.g.*,

forest habitat) (Forest Service 2004i). Regardless of which action alternative is chosen, this proposal will result in long-term benefits to the butterfly because more area of butterfly habitat will be protected than under existing conditions (Forest Service 2004i). The purpose of the project is to improve or replace the facilities in the campground to enhance the safety, accessibility and enjoyment of the site for National Forest visitors, while conserving the natural and cultural resources in the area. The main tenets of this proposal are to reduce the number of camping sites and condense the campgrounds into smaller areas through permanent campground boundaries with physical barriers (*e.g.*, fences or boulders) to reduce access and associated trampling of butterfly habitat (Forest Service 2004i). Construction activities will likely be initiated during 2005 and will follow predefined best management practices and include seasonal restrictions during construction, monitoring of construction activities, surveys for the butterfly and foodplants, and revegetation where appropriate (Service 2004d, Forest Service 2004i). Construction will not result in a disruption of the overall metapopulation dynamics of the species because impacts will only be a short-term disturbance of butterfly habitat, with a minor amount of butterflies affected. We have found that these types of impacts are not a significant threat to the butterfly because the species and its foodplants have been demonstrated to be resilient to some disturbances (*e.g.*, edges of the football field, campgrounds, and railroad) (Service 2004d). This remaining capital improvement project will offset the high demand for developed recreation, while limiting associated recreational impacts to the butterfly. For these reasons, reconstruction of the remaining five campgrounds is not considered a threat to the butterfly and will result in long-term benefits over existing conditions.

Powerline, Service Road, and Corridor

The Forest Service issued a special use permit for the Otero County Electrical Cooperative Powerline project to install a new powerline corridor (Service 2000). The Forest Service determined that the powerline project was expected to result in a disturbance of less than 0.4 ha (1 ac) of suitable butterfly habitat (Forest Service 1999a). They developed a seed mix for erosion control, avoided construction during the active season of butterfly, and added some nectar-source species to restore the area of disturbance (Forest Service 1999a, 2000b). This action resulted in insignificant effects to the butterfly and does not threaten the butterfly currently or in the foreseeable future.

In October 2001, we informally conferenced on the Dry Canyon Telephone project with the Forest Service (Service 2001a). Under this project, the Forest Service relocated a planned telephone line from suitable butterfly habitat to burial in the middle of a road (Forest Service 1999) that is not butterfly habitat. The Forest Service also completed several conservation measures (*e.g.*, foodplants were flagged and avoided within equipment staging areas) as part of this project (Forest Service 2002). The impacts associated with habitat disturbance from this project were temporary. Therefore, this project was, but is no longer considered a threat to the species.

The economic analysis estimated that over the next 10 years about 145 km (90 mi) of rights-of-way within butterfly habitat will be maintained, and that the Forest Service and Otero County Electric Cooperative will apply conservation activities for the species that range from $30,400 to $39,600 per mile ($48,640 to $63,360 per km) (Service 2004c). Rights-of-way provide access to powerlines and poles for routine monitoring and maintenance activities (1999a). For example, powerlines are visually inspected about 4 to 6 times per year by driving a vehicle along the powerline and checking for any problems or hazards (*e.g.*, remove hazard trees) (Forest Service 1999a). Existing rights-of-way access range from two-track dirt paths to graveled roads in some of the areas that traverse or are adjacent to a variety of areas including meadows, mixed conifer forest, and pavement (Forest Service 1999a). These activities could result in adverse effects to the butterfly from scraping and grading activities (*e.g.*, some individuals will likely be crushed and killed); however, we anticipate that the majority of impacts from rights-of-way maintenance activities will be temporary (scraping and leveling vegetation from within the footprint of existing rights-of-way). The Forest Service indicated that they will issue a special use permit that includes conservation measures for the butterfly (Forest Service 2004i). Moreover, annual maintenance projects are expected to be conducted in phases such that not all 145 km (90 mi) of rights-of-way will be impacted in a given year (Forest Service 2004l). We encouraged the Forest Service to include a seasonal restriction during the active season of the butterfly and revegetate areas that are disturbed during maintenance activities to limit adverse impacts (Service 2004c). The Forest Service indicated that they were unable to include specific measures because activities vary from year to year and project to project (Forest Service 2004l). Nevertheless, the contractors that conducted our draft economic analysis of the proposed critical habitat for the butterfly interviewed employees of the Otero County Electric Cooperative and found that they were anticipating seasonal restrictions on maintenance activities (Service 2004). Based upon this information, the special use permit will likely include some measures to limit adverse effects on the butterfly, but may not avoid all impacts such as crushing of larvae from heavy equipment use. Nevertheless, because of the linear nature of these impacts and the recognition that adjacent habitat will remain intact, we believe this activity represents only a limited threat to the species. We also note that no new Electric Cooperative projects are currently planned, indicating no other powerline-related threats are foreseeable (Service 2004).

Domestic Livestock Grazing

The known range of the butterfly includes portions of six livestock grazing allotments and two horse pastures: La Luz Watershed, Sacramento, Russia Canyon, Pumphouse, James Canyon, Walker C.C, and Heliport and Pines horse pastures. The La Luz Watershed allotment covers about 2,023 ha (5,000 ac) and is closed and not grazed by livestock (Service 2004c, Forest Service 2002d). No livestock grazing occurs in the portion of the Sacramento allotment occupied by the butterfly because the topography is too steep for cattle to access (Service 2004a). The Heliport Horse Pasture (180 ha (446 ac)) is not grazed, whereas the Pines Horse Pasture (23 ha (57 ac)) is stocked with up to 4 horses for about 5 months out of the year (Service 2004c). The Pumphouse Allotment currently is stocked with up to 66 cattle, the Walker C.C. Allotment is permitted to stock up to 69 cattle, and the Russia Canyon Allotment is stocked with up to 42 cattle (Service 2004, 2004c). These allotments are grazed for about 6 months out of the year, from around mid-May to mid-October during the active season of the butterfly (Service 2004c). The butterfly occurs within about 91 ha (225 ac) of the Pumphouse Allotment and 7.2 ha (18 ac) of the Russia Canyon Allotment; however, surveys have not detected butterflies within the Walker C.C. Allotment (Forest Service 2001, 2004n). The grazing permit for the James Canyon allotment (4,299 ha (10,623 ac)) was cancelled in the early 1990s. Prior to that time, the allotment was stocked

with about 142 cattle for 6 months out of the year. The Forest Service is currently considering resumption of livestock grazing in the James Canyon Allotment (Forest Service 2004b). The Forest Service has proposed a utilization level of 35 percent in areas open to livestock grazing, and would permanently close about 2,790 ha (6,900 ac) of the allotment to grazing within the Silver Springs Canyon area (Service 2004c, Forest Service 2004b). Therefore, about 40 percent (63 ha (155 ac) of 154 ha (380 ac)) of the occupied butterfly habitat will not be grazed by livestock (Forest Service 2004b).

Currently, the allowable forage utilization level in livestock grazing allotments within the range of the butterfly is 35 percent with a minimum stubble height of 10 centimeters (cm) (4 inches (in)) (Service 2004c). The Forest recently requested formally conferencing for the James Allotment regarding potential impacts related to trampling of larvae from livestock (Forest Service 2004b). Prior to this request, we there have been no conferences between the Forest Service and the Service on livestock activities and the butterfly (Service 2004c). Nevertheless, the Forest Service manages these allotments consistent with existing range management standards and guidelines under their Forest Plan, and when management adjustments are necessary to meet the forage levels, adjustments are made through the permit administration process (Forest Service 2002d, 2004i, 2004l, United States District Court 2002). The existing forage utilization (*i.e.*, 35 percent) is adequate for the protection of the butterfly to limit adverse effects (Service 2004c). Moreover, the Forest Service has been and is proposing to distribute livestock throughout the pastures in each allotment to minimize the number of cattle and the potential for trampling of butterflies within individual meadows (Forest Service 2002d, 2004b). The Forest Service will also formally monitor three meadows within the James Canyon and Pumphouse Allotments (Forest Service 2004i), in addition to monitoring requirements under a previous (2001) court settlement agreement (*Forest Guardians* v. *United States Forest Service et al.* CIV 00–490 JP/RLP & CIV 00–1240 JP/RLP–ACE (Consolidated)) and as part of the permit administration process (Forest Service 2002d). If needed, management adjustments (*e.g.*, reducing the number of livestock or removing all livestock) are made through the permit administration process (Forest Service 2002d, 2004i, 2004l).

Although we previously assumed that grazing can eliminate or reduce the food plants used by the butterfly, we now conclude that management of current and future levels of grazing is compatible with conservation of the butterfly because the Forest Service is currently and will continue to manage these allotments for moderate grazing (*i.e.*, 35 percent forage utilization) (Service 2004c, Forest Service 2002d, 2004i). For example, we incorrectly assumed that grazing would reduce or eliminate sneezeweed (*Helenium hoopesii*). In fact, the USDA Poisonous Plant Research Laboratory (2004) reports that sneezeweed is a poisonous nonpalatable species that induces chronic vomiting when eaten by animals. The Forest Service also indicated that most of the mountain meadows are currently in satisfactory range conditions and that sneezeweed may actually decrease as range conditions improve (Forest Service 2001).

A focused study on the butterfly found that heavy grazing of butterfly foodplants, particularly during years with below-normal precipitation, may result in increased trampling and mortality of butterfly larvae because New Mexico penstemon may be among the few plants that are green (Pittenger and Yori 2003). On the other hand, the Forest Service indicated that Pumphouse Canyon has one of the highest densities of the butterfly even with high forage utilization in 1999 (*i.e.*, 60 to 70 percent) from combined elk and livestock use (Forest Service 2001, 2002d). Leaf lengths of palatable grass species in Pumphouse Canyon averaged 8.4 cm (3.3 in) in 1999, 11.4 cm (4.5 in) in 2000, 21.3 cm (8.4 in) in 2001, and 10.1 cm (5.3 in) in 2002 (Forest Service 2002d). A leaf length of 10.1 cm (4 in) and greater reflects moderate forage utilization and equates to about 35 percent forage utilization (Forest Service 2002d). The Forest Service did not provide any monitoring data to us from 2003 or 2004, but indicated that they are managing this and other allotments to attain moderate forage use (Forest Service 2004d, 2004i). Although Pittenger and Yori (2003) found that heavy grazing on New Mexico penstemon occurred during 2002 within the Pumphouse Allotment, there were no differences in the density of New Mexico penstemon when compared to ungrazed meadows within Spud Patch Canyon. They also did not find a difference in the overall number of adult butterflies observed between moderate and heavy grazing years (*i.e.*, 2000, 2001, and 2002) within the Pumphouse Allotment (Pittenger and Yori 2003). Forage utilization may have been high in 1999 because of a disproportionate amount of grazing by elk (Forest Service 2002d) (see discussion below on current elk management).

We do not expect that heavy grazing will continue to occur within the range of the butterfly because the Forest Service has recently been monitoring and managing these allotments to attain 35 percent forage utilization and they must manage and protect long-term range conditions consistent with their range management regulations (*e.g.*, see 36 CFR 222) (Forest Service 2002d, 2004b, 2004i, 2004l, United States District Court 2002). We also note that, similar to other site-specific decisions, authorized grazing permits must be consistent with the applicable Forest Plan at the time they are issued (36 CFR 219.10).

We find that the Lincoln National Forest Plan will manage butterfly habitat because at least two of the applicable standards and guidelines apply to the butterfly including: (1) Protecting and managing essential and critical habitats of threatened, endangered, and sensitive species through ensuring that legal and biological requirements of designated plant and animal species are met; and (2) identifying, protecting, and enhancing existing and potential habitat of all threatened, endangered, and sensitive species (USDA Forest Service 1986). The butterfly has been designated by the Regional Forester as a Sensitive Species, and, as such, will continue to be analyzed in all applicable NEPA documents (Forest Service 2004i). The Forest Service has indicated that conservative stocking levels, deferred and rest-rotation grazing schemes, and timing of permitted grazing are the best ways to minimize grazing impacts on the butterfly (Forest Service 2001). We agree with this conclusion.

We acknowledge that grazing can incidentally kill butterflies through trampling and/or accidental ingestion of larvae or eggs (Pittenger and Yori 2003, Forest Service 2002, White 1986), and anticipate such effects are occurring within each of the allotments that overlap with occupied butterfly habitat (*i.e.*, Pumphouse, Russia Canyon, and La Luz Watershed). However, because the Forest Service is managing these allotments for medium-intensity grazing, we believe the effects will be minimal and not result in the butterfly population being compromised (Forest Service 2002d). In the future, this same management strategy (*i.e.*, the forage

utilization threshold) will ensure larval and adult foodplants are maintained.

In 2001, the New Mexico Department of Game and Fish changed the management objective for game management unit 34, which overlaps with the range of the butterfly. A 5-year plan was adopted to reduce the number of elk from about 4,000 to 1,000 across the entire game management unit (Forest Service 2002). The current elk population goal is 1,700 animals, with the most recent survey results estimating a current elk population of 2,700 animals within this game management unit (Forest Service 2004b). The New Mexico Department of Game and Fish has continued to increase the number of elk hunting tags and has implemented depredation hunts to minimize the impact of elk grazing on range conditions (Forest Service 2004b). These actions will continue to further reduce the impact of grazing on the butterfly.

The foregoing analysis indicates that even when grazing is not closely managed, grazing appears to have a negligible effect on butterfly populations and its major foodplant, New Mexico penstemon (Pittenger and Yori 2003). Still, we expect that grazing will be closely managed to attempt to meet 35 percent forage utilization (Forest Service 2002d, 2004i, 2004l). For these reasons, the current and future occurrence of grazing does not represent a principal factor in the viability of the species and its habitat.

Trespass Horses

About 20 to 40 trespass horses have been observed grazing in meadows of the James Allotment within the northern portion of the Sacramento Ranger District (Forest Service 2004b, Service 2004b). Trespass horses could have an impact on forage utilization levels and trampling of butterfly host plants and larvae (Forest Service 2004b). The Forest Service has posted impoundment notices, contacted presumed owners, and spent $10,000 repairing and rebuilding fences along the Forest boundary (Forest Service 2004i). To date, these efforts have not been successful in reducing the number of trespass horses on the Sacramento Ranger District (Forest Service 2004b). Similar to livestock grazing, we believe that trespass horses will have negligible effects on butterfly populations and its major foodplant, New Mexico penstemon. They are also unlikely to eat sneezeweed because it is a poisonous, nonpalatable species. Horses are currently having very little impact on soil and range conditions. For example, the Forest Service reports that the soil condition rating is satisfactory and range condition is stable or increasing on 98 percent of the James Allotment (Forest Service 2004b). For these reasons, trespass horses are considered a low threat to the butterfly, because they occur in a limited number of meadows in the James Allotment (Forest Service 2004b). We also note that the Forest Service has committed to removing the feral horses from the James Allotment, and we anticipate that this will happen in the near future (Forest Service 2004b, Service 2004b). We have not relied upon this future removal in our determination that trespass horses are a low threat.

Fire Suppression and Wildfire

In the proposed rule, we concluded that the condition of mountain forest lands as a result of 100 years of fire suppression in the Sacramento Ranger District threatened the butterfly. In light of new information we received (*e.g.*, Service 2004b, Forest Service 2002a, 2002c), we reexamined our original conclusion. Prior to 1900, the mean natural fire interval for forests in the Sacramento Mountains was about 4 to 5 years (Kaufmann *et al.* 1998). Frequent, low-intensity surface fires historically maintained a forest that was more open (*i.e.*, more non-forested patches of different size, more large, older trees, and fewer dense thickets of evergreen saplings) than is currently the case (Kaufmann *et al.* 1998).

Due to the small known range and low abundance of the butterfly, the subspecies is potentially vulnerable to catastrophic wildfires. Although at least nine catastrophic wildfires have burned over 34,000 ha (90,000 ac) during the last 50 years in the Sacramento Mountains (Kaufmann *et al.* 1998), a significant fire has not been documented within occupied habitat or proposed critical habitat since 1916 (Service 2004b). Because fire is an inherently variable process depending on season, fuels, wind, moisture, etc. it impossible to accurately predict how the butterfly will respond. Nevertheless, the effects of fire on butterfly habitat quality and availability can be expected to vary based on the severity of fire, the response of foodplants to burn severity, and suitability of postfire vegetation (Romme *et al.* 2004).

Although the effect of fire upon this species is unknown (*e.g.*, for a recent review see Service 2004b), some local information is available from post-fire monitoring of the Scott Able fire that burned 24 km (15 mi) southeast of the Village of Cloudcroft. In May 2000, the Scott Able fire burned 6,400 ha (16,000 ac) in the Lincoln National Forest, covering elevations between 2,250 to 3,000 m (7,000 to 9,300 ft) (Cary 2004 cited in Service 2004b). This intense, wind-driven fire burned an estimated 0 to 10 percent of the meadows and 85 to 90 percent of the forested canopies within the mapped fire boundary (Cary 2004 cited in Service 2004b), meeting the qualifications for a stand replacement fire in much of the burned area (McCarthy and Yanoff 2003). Meadows in mixed conifer habitat that did not burn were situated primarily along drainages (Cary 2004 cited in Service 2004b). The butterfly does not occur in the location of the burn, but New Mexico penstemon and sneezeweed can be found (Cary 2004 cited in Service 2004b). Between 2001 and 2003, mobile butterflies associated with shrubs, grasses, and forbs have shown a positive response to the fire, with most species peaking in 2001 after abundant spring precipitation (Cary 2004 cited in Service 2004b).

Fires in the Sacramento Mountains tend to burn in a mosaic pattern (*i.e.*, patches of burned and unburned vegetation) and are less likely to burn in meadows compared to surrounding forests because of the types of fuel involved (Forest Service 2001, 2002c). In fact, weather conditions that would trigger a wildfire in forested areas (*i.e.*, mixed conifer fuel type) that are adjacent to meadows consist of very dry, windy days (Forest Service 2001, 2002c). Meadow habitat is usually not at high risk during fires within the mixed-conifer fuel type because fire behavior during wind-driven events generally burns through the crowns or canopy of trees, with little to no high-severity burns within meadows (Forest Service 2001, 2002c). These conditions would not result in pronounced heat effects in the soil or seedbank (R. Guaderrama cited in Service 2004b, Forest Service 2001), especially within areas where the larval host plants grow, because they usually lack continuous fine fuels. For example, in areas burned by the Scott Able fire, underlying soils were not exposed to extreme temperatures and soils were generally unharmed (Forest Service 2000). These data suggest that meadows and drainages may be less likely to burn during wind-driven events, which offers some protection to the butterfly and its habitat. Still, some amount of butterfly habitat will likely burn. In that event, it is likely that adjacent butterfly localities in surrounding habitat and unburned inclusions would serve as source populations to recolonize burned areas following a fire. This information suggests that catastrophic wildfire may

not be as great a threat as we had originally believed.

Since 1999, the Sacramento Ranger District of the Lincoln National Forest has been working on reducing the threat of catastrophic wildfire in the wildland-urban interface (WUI) (Forest Service 1999, Service 2004). We have been following several projects throughout the Sacramento Ranger District, and have found that some projects may not only provide a reduction in the risk of catastrophic wildfire, but also enhance marginally suitable butterfly habitat along the edges of forests/meadows (Service 2004d). We have observed that the butterfly's foodplants, particularly New Mexico penstemon have been reestablished within areas that were recently disturbed (*e.g.*, Highway 130 adjacent to Deerhead Campground, edges of the football field) (Service 2004d). The type of disturbance and soils likely influence whether foodplants will be reestablished; however, many of the forest/meadow edges that are contained within WUI projects have low-density foodplants already established (Forest Service 2000c). Within these areas, we believe that an increase in sunlight from thinning activities will allow foodplants to increase in both size and abundance. This is what we have observed within the construction footprint of Highway 130 adjacent to Deerhead Campground, the edges of the football field on Lost Lodge Road, and in drainages throughout these areas that have been thinned (Service 2004d).

In the Sacramento Mountains, several locations adjacent to occupied butterfly habitat have been progressively thinned since 2002. Thinned areas occur in Bailey Canyon (215 ha, 532 ac), Pineywood Canyon (262 ha, 647 ac), Deerhead Canyon (146 ha, 360 ac), and along Cox Canyon (72 ha, 178 ac). An additional 373 ha (921 ac) are designated for thinning in Apache Canyon and 81 ha (201 ac) are projected for a different part of Deerhead Canyon (Service 2004b). Thinned locations adjacent to suitable butterfly habitat may be used or colonized by the butterfly (Service 2004d). Pittenger and Yori (2003) documented butterfly movement between meadows, with the movements of one butterfly crossing a closed-canopy mixed-conifer forest for the entire route. Butterfly movements such as this example are likely not common because forests do not provide the necessary foodplants. Thus, woodland canopy reduction is important for open-habitat butterflies, which readily move from meadows into corridors, but rarely from meadows into dense woodlands (Sutcliffe and Thomas 1996). Also, open-habitat specialist butterflies are known to reach higher densities in patches connected by corridors than in isolated patches (Haddad and Baum 1999). The formation of cleared corridors or stepping-stone patches by thinning could allow the butterfly to migrate between suitable meadows (Maina and Howe 2000, Service 2001b), thus encouraging colonization of new sites or genetic exchange among the subpopulations. Thinning has also been associated with the establishment of plant and butterfly edge specialists (*i.e.*, species that are adapted to the conditions created at the boundary between wild and disturbed lands such as a forest where the adjacent land has been cut), which could provide potential microhabitats or nectar sources for the butterfly (Bergman 2001). We have not done an extensive inventory of all areas thinned throughout the Sacramento Ranger District; however, we maintain that areas where foodplants become more abundant could enhance habitat connectivity between occupied localities and provide long-term benefits for the butterfly, even with the potential for short-term impacts (*e.g.*, Service 2002b, 2001b). Thus, we conclude that thinned forests could facilitate habitat connectivity between meadows occupied by the butterfly (Service 2001b).

Since 2000, the Forest Service has invested almost $11 million to reduce hazardous fuels on more than 18,616 ha (46,000 ac) on the Lincoln National Forest, with funding and amount of land treated in 2004 nearly three times the 2000 level (Forest Service 2001, 2002a, 2003, 2004c, 2004h, 2004m, Service 2004b). As part of the Healthy Forests Initiative, in June 2004, the Lincoln National Forest received $750,000 to thin an additional 607 to 809 ha (1,500 to 2,000 ac) of overgrown stands of trees adjacent to communities in Lincoln and Otero counties (2004h). Vegetation management activities within the range of the butterfly consist primarily of thinning treatments to reduce fire fuels loads and restore forest structure to a more natural state. About 89 percent of the lands within the proposed critical habitat boundary (12,419 of 17,628 ha (30,687 of 43,560 acres)) are classified by the Forest Service as WUI treatment areas (Service 2004c). The goals of these thinning treatments are to reduce the threat of catastrophic wildfire in the wildland-urban interface and to assist in the economic sustainability of these communities. As described above, little quantitative data has been gathered following the WUI projects being implemented on the Lincoln National Forest. Nevertheless, qualitatively we have found a beneficial response of the butterfly to the increase in thinning (Service 2004d). Recent WUI projects have targeted reducing ladder fuels (those fuels that convey flames from the ground to the tree canopy) and tree densities in forests surrounding the meadows (Service 2004b). These projects should assist in lowering the risk of catastrophic wildfire in forested areas and may reduce the intensity and severity of wildfires in adjacent butterfly habitat (*i.e.*, meadows).

The Forest Service is also currently proposing to amend their Forest Plan to allow broader application of natural fire to aid in forest restoration (Forest Service 2004d). Depending on the season of burns and other factors, fire activity from this action could be expected to range from creeping surface fires with flame lengths of less than 30 cm (12 in) burning in pine litter and duff (leaves and branches on the forest floor) during periods when temperatures are low and the relative humidity is high, to an active surface fire burning freely in all surface fuels, and actively torching groups of seedling and small-pole-size (2.54 to 10 cm)(1 to 4 in) trees. The more active fires will also regularly torch individual overstory trees of various sizes as well as small groups of overstory trees with continuous ladder fuels beneath them. These types of burns would generally provide conditions suitable for increased herbaceous plant growth by removing a thick layer of dead plant debris within treated areas, in addition to enlarging some of the meadows (*i.e.*, from killing conifers that have encroached). We believe that the mosaic effect created by burned and unburned areas, in conjunction with a reduction in catastrophic fire risk and increase in meadows (from encroaching conifers burning), may result in long-term benefits for the butterfly.

We previously concluded that wildfire was one of the most significant threats facing this species. In the proposed rule, we found that a significant increase in funding was required to reduce the risk of catastrophic fire for the butterfly. The new information we reviewed indicates this funding and subsequent increases in fuels management have occurred and will continue for the foreseeable future (Forest Service 2001, 2002a, 2003, 2004c, 2004h, Service 2004b). We have also reexamined our original conclusion based upon site-specific data from fires that have burned in the last few years. These data demonstrate that meadows

generally do not burn at high intensity, but usually burn as a mosaic (Service 2004b). Given recent information from the Sacramento Mountains and new and continued efforts to reduce the risk of catastrophic wildfire, we no longer consider fire a threat of high magnitude. In fact, fire and activities conducted to reduce the risk of fire may be beneficial by increasing connectivity between areas of suitable butterfly habitat. Thus, we find the threat to the butterfly from catastrophic wildfire has been reduced and is no longer significant.

Highway and Forest Road Reconstruction

In the proposed rule, we concluded that construction of roadways had historically eliminated or reduced the quality or quantity of butterfly habitat. We reexamine this conclusion based upon new information. The Forest Service indicated in their comments on the proposed rule that the only road construction planned within butterfly habitat is associated with campground reconstruction projects (Forest Service 2001). These activities, including the associated road construction, are not considered a threat to the butterfly (see ''Campground Projects'' section above). Road grading activities will likely occur on both Forest Service and private lands. The Forest Service has not found adverse impacts to the butterfly from these actions because the majority of these maintenance activities occur within the existing footprint of the road during the non-active season of the butterfly (Forest Service 2001). These road maintenance activities can cause localized adverse impacts to the butterfly through the elimination of larval food and adult host plants or the crushing of life history stages. However, as described under the Otero Electrical Powerline analysis above, many of these impacts are likely temporary and will not lead to a disruption of local populations.

The NMSHTD project detailed in the proposed rule cleared a variety of vegetation by scraping and widening the road and shoulders, constructing retaining walls, adding drainage ditches and culverts, and reconstructing a curve. Topsoil and larval food plants were stockpiled and used in revegetation when the project was completed. Monitoring documented that transplanting efforts were not effective (Pittenger and Yori 2003); however, the area has been revegetated from naturally occurring seeds and now contains larval food plants and adult nectar sources (Service 2004). Although the butterfly has not been documented within this area to date, we believe it may be used as early as the 2005 active season of the species (April through October). We base this conclusion on observations in the areas adjacent to the football field that had similar vegetation disturbance and subsequent foodplant and butterfly recolonization (Service 2004d). This information indicates that road maintenance and reconstruction activities have the potential to adversely affect the butterfly, but they have not been demonstrated to be a serious impact because the butterfly and its foodplants are more resilient than previously thought. Thus, we do not consider road reconstruction and maintenance activities to be a serious threat to the butterfly that will result in long-term consequences.

Recreational Impacts

Off-highway vehicles (OHVs) pose a threat to the butterfly through direct crushing of eggs, larvae, pupae, or thermoregulating (maintenance of a constant internal body temperature regardless of environmental temperature) adults located on bare soils, leaves, or grasses within or adjacent to trails and roads (66 FR 46575, September 6, 2001). The Forest Service recently produced a map and report that categorized meadow disturbances (Forest Service 2004e). They found that dispersed camping and OHV use is increasing on the Forest, and that impacts are occurring in about half of the occupied butterfly habitat (225 ha (555 ac)) (Forest Service 2004e). The level of OHV activity is high within four areas (Pumphouse Canyon, Bailey Canyon, Zinker Canyon, and La Luz road in the vicinity of Forest Road 162A).

During 2004, the Forest Service focused on reducing the impact of illegal OHV traffic and related recreational impacts within the occupied butterfly habitat of Bailey Canyon by: (1) Fencing access points to meadows within these areas; (2) felling logs and trees across trails; (3) enforcing regulations that prohibit travel off-road use in certain areas; (4) placing signs in the middle of illegally created OHV trails; and (5) increasing public education regarding impacts of OHV on natural resources (Forest Service 2004f, Service 2004d). For example, fencing that was placed in Bailey Canyon during summer 2004 has thus far proved to be an effective deterrent against OHVs entering occupied butterfly habitat (Service 2004d, Forest Service 2004i). Fencing, signs, and monitoring by law enforcement personnel have similarly stopped OHVs from entering butterfly habitat in other areas of the forest (*e.g.*, Pines Campground and Silver Springs) (Forest Service 2000c). The Forest Service indicated that these fences have not been cut or torn down and OHVs generally stay out of meadows if their access is blocked (Service 2000c, 2004d). The Forest Service has committed to continue to alleviate OHV-related impacts to the butterfly by installing physical barriers, posting signs, felling trees, and enforcement (Forest Service 2004i). Nationally, the Forest Service is also currently revising their travel management regulations to require each Forest to establish a system of roads and trails and regulate or prohibit certain motor vehicle uses (July 15, 2004, 69 FR 42381).

We are not relying on this effort in our analysis of this potential threat, but recognize that the revised travel management regulations may provide a long-term conservation benefit to the species by providing a consistent policy that can be applied to all classes of motor vehicles, including OHVs, that would allow the agency to regulate different types of uses. Nevertheless, it is likely that even with these measures, some temporary OHV-related impacts will continue to affect the butterfly and its habitat. OHV impacts will likely result in the temporary crushing or possible destruction of foodplants in localized areas and mortality of individual butterflies (or other life-history stage) (Service 2004d). We believe the magnitude of these impacts is low based on our observations of OHV use and the estimate of OHV impacts in Kockelman (1983). Kockelman (1983) estimated that a two-wheel OHV leaves a track about 13 cm (5 in) wide and disturbs about 0.4 ha (1 ac) for every 32 km (20 mi) traveled, whereas tracks made by a 4-wheel OHV are typically 0.5 m (18 in) wide and disturb about 0.4 ha (1 ac) for every 10 km (6 mi) traveled. Using these estimates, we believe that only a small proportion of occupied butterfly habitat would be impacted in a given year. For example, if a 4-wheel OHV tracks across occupied butterfly habitat, the OHV would need to travel 96.5 km (60 mi) uniformly to completely disturb a 4.0-ha (10-ac) meadow. Many of the OHV impacts that have been observed are single events (*i.e.*, there are fewer than 5 to 10 OHV tracks across a meadow) (Forest Service 2000c, Service 2004d). This type of an impact would account for very little habitat disturbance. For all of these reasons, we do not believe that OHVs significantly threaten the butterfly.

In the proposed rule, we found the butterfly may also be threatened by impacts from mountain bikes, hiking, and camping because of the

development of trails, a reduction of native vegetation to barren areas, and trampling, but the potential significance of these impacts had not been quantified. We indicated that the species had the potential to be impacted by these activities because larvae could be found along and adjacent to several popular mountain biking routes, hiking trails, and dispersed camp sites.

The Forest Service has conducted project-by-project analysis of large events (see discussion below) to determine potential impacts to the butterfly. These analyses will continue because the species is designated as a sensitive species on the Lincoln National Forest (Forest Service 2001, 2004i). As a sensitive species, the Forest Service conducts surveys within habitat that is capable of supporting the butterfly and analyzes the impacts of proposed projects as part of the NEPA process (Forest Service 2004i). For example, the Forest Service indicated that their biologists survey routes prior to large events such as races, and they determined the trails were not occupied by larvae and, therefore, were not affected (Forest Service 2001). It is our understanding that if larvae were to be found within the route of a race, the Forest would either analyze the impact on the species through the development of a Biological Evaluations (BEs) and a NEPA document, or they would move the route to avoid impacts to the butterfly. We do not have quantitative data on the potential impact from hiking or dispersed camping. However, our observations over the last several years suggest the potential adverse impacts from hiking and dispersed camping are minor and result in short-term crushing of vegetation (Service 2000a).

We still believe mountain biking, hiking, or camping may directly or indirectly affect larval food plants, nectar sources, or various life stages of the butterfly through the development of trail ruts, the loss of residual topsoil and vegetation, increased erosion, the creation of stretches of standing water or muddy trail/road conditions, the development of parallel tracks, and the establishment of unauthorized trails (Cessford 1995). However, it does not appear that these impacts are likely significant for the butterfly. We reached this conclusion because we have found that some small-scale impacts such as those described above, particularly temporary crushing of vegetation (*e.g.*, on trails), does not result in long-term impact to the local population (*e.g.*, see Service 2000, 2000a, 2002c, 2004e) because only a small number of individuals have the potential to be affected. Thus the overall population would remain intact.

We have continued to observe a variety of these small-scale impacts (*e.g.*, barren ground, trampled food plants, multiple trails, vehicle tracking, etc.) in areas used by larval and adult life stages of the butterfly. Nevertheless, it does not appear that these small-scale disturbances have reduced the amount of suitable habitat in and around developed campgrounds or undeveloped campsites known to support the butterfly, because the subspecies is still abundant within these areas (*e.g.*, Deerhead, Pines, Sleepygrass, Slide, Black Bear, and Fir Campgrounds) (Forest Service 2004e). Consequently, the effect of mountain bikes, hiking, and camping on the butterfly is not currently considered a threat.

Nonnative Vegetation

In the proposed rule, we found that nonnative vegetation threatened the butterfly by out-competing and reducing or eliminating food plants for larvae and nectar plants used by adults (66 FR 46575, September 6, 2001). On the Lincoln National Forest, there are 12 aggressive nonnative plant species, including Russian knapweed *(Acroptilon repens)*, musk thistle *(Carduus nutans)*, oat grass, and teasel *(Dipsacus sylvestris)*. In 2002, we completed an informal conference with the Forest Service regarding a District-wide noxious weed management program (Service 2002, Forest Service 2000d). This program also authorizes the NMSHD to treat noxious weeds within state and Federal highway rights-of-way (Forest Service 2000d). We concluded that the effects from the Forest Service's proposal to manage and remove noxious weeds were expected to be insignificant (*i.e.*, should never reach the level where incidental take will occur) or discountable (*i.e.*, effects are extremely unlikely to occur) to the butterfly (Service 2002). These data indicate that nonnative vegetation and the application of herbicides are currently being managed, which significantly reduced the threat to the species. As such, we do not believe the nonnative vegetation and the application of herbicides are a significant threat to the butterfly.

Conclusion for Factor A

The butterfly appears to exhibit much of the same behavior, life history, and patchy distribution as other well-studied species in this genus. The patchy distributional pattern is expected in many butterflies in the genus *Euphydryas* and other species, because they exist as metapopulations and at any instant butterflies may be using some areas and not others (Hanski and Gilpin 1991). Suitable habitat within the range of the species can play a pivotal role in maintaining natural metapopulations, especially butterflies that may have limited dispersal abilities (Murphy and Weiss 1988).

In the proposed rule, we found that much of the remaining suitable butterfly habitat, and the long-term persistence of the species, was threatened by the direct and indirect effects of commercial and private development, Forest Service projects, catastrophic wildfire, fire suppression activities, highway reconstruction, OHV use, trampling, overgrazed range conditions, and nonnative vegetation. As detailed above, we received new information since publication of the proposed rule specific to the butterfly and the potential threats. It is our determination that based on an analysis of the best scientific and commercial data available that the present or threatened destruction, modification, or curtailment of the butterfly's habitat or range is no longer a significant factor because new information indicates that these threats have been eliminated or reduced. Considering the magnitude, imminence, and irreversibility of threats to the butterfly and its habitat, we now conclude that the threats identified under Factor A are not likely to cause the species to become endangered within the foreseeable future throughout all or a significant portion of its range (see discussion after ''Factor E'' below). Based upon the information reviewed above, we also conclude that the butterfly is not endangered of extinction throughout all or a significant portion of its known range.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

In our proposal, we found that the species was at risk from over-collection. The Forest Service issued a closure order in April 2000 for the collection of any butterflies without a permit on the Smokey Bear and Sacramento Districts of the Lincoln National Forest (Forest Service 2001). This closure order restricts the collection of the butterfly without a permit. Pursuant to 36 CFR, § 261.58(s), the Forest Service specifically prohibited ''capture, collection, killing, possession, storage, or transportation of the Sacramento Mountains checkerspot butterfly, and of life stages or parts thereof.'' The Forest Service posted the closure order in accordance with their regulations and also published a notice of the closure

order in the newsletter of the Lepidopterists' Society (36 CFR 261, Lepidopterists' Society Newsletter 1999, Holland 1999). Forest Service Law Enforcement is aware of possible threat of illegal collecting. It is our understanding that they patrol these areas. Penalty for illegal collection is a maximum of $5,000 and 6 months in jail. Since the closure order was enacted, we have not found any evidence (*e.g.*, glassine collection envelopes, commonly used to house captured individuals) that the butterfly is being illegally collected. Since 2000, we and the Forest Service have spent hundreds of person-hours in the field surveying for the butterfly, and neither we nor they have observed any people that appeared to be collecting the butterfly. The Forest Service intends to keep the closure order in place indefinitely. Consequently, on the basis of the efforts of the Forest service and the implementation of the closure order, we believe that over-collection is no longer considered a threat to the species.

C. Disease or Predation

There are no indications at this time or at the time of the proposal that disease or predation might be a limiting factor for the butterfly.

D. The Inadequacy of Existing Regulatory Mechanisms

Public Lands

While inadequate protection by way of existing regulatory mechanisms was a factor in our decision to propose this species for listing, developments since our proposal have addressed these inadequacies. The Forest Service has the authority through the National Forest Management Act (NFMA) to manage the land and activities under their administration to conserve the butterfly. For example, this species was placed on the Regional Forester's Sensitive Species List, and the Forest Service has minimized or avoided potentially adverse impacts to the butterfly by either altering or canceling several proposed projects including campground reconstruction, a new administrative building, Townsite Act proposal, nonnative vegetation management, and the Dry Canyon Telephone line project (see Factor A section above for details). The Forest Service indicated that they currently provide protection and management measures for the butterfly because it is a designated sensitive species (Forest Service 2001). The Forest Service will continue to protect and manage butterfly habitat on public lands by analyzing potential impacts of proposed projects on the butterfly (Service 2004b, Forest Service 2004i). In fact, Forest Service policy (FSM 2670.3) states that Biological Evaluations (BEs) must be completed for sensitive species, and signed by a journey-level biologist or botanist. The BE must be signed prior to any NEPA decision document. BEs must include an evaluation of effects of proposed management actions on these species or their habitats occurring within the analysis area. The NFMA also requires the Forest Service ''provide for a diversity of plant and animal communities'' (16 U.S.C. 1604(g)(3)(B)) as part of their multiple use mandate. The Forest Service is required to maintain ''viable populations of existing native and desired non-native species in the planning area'' (36 CFR 219.19). The Sensitive Species program was designed to meet this mandate and demonstrate their commitment to maintain biodiversity on National Forest System lands. The intent of this program is a proactive approach to conserving species to prevent a trend toward listing under the Act, and to ensure the continued existence of viable, well-distributed populations.

The Lincoln National Forest will continue developing BEs and conducting NEPA analyses for each project that will affect the butterfly or its habitat (Forest Service 2004i). We will continue to analyze these site-specific NEPA documents, conduct field surveys, and monitor the cumulative impacts of projects on the butterfly and its habitat.

In areas that have the potential to support the butterfly, the Forest Service has and will continue to do so under their existing authorities: (1) Protected and managed occupied and unoccupied butterfly habitat on public lands; (2) applied appropriate weed and pest control practices in or near occupied meadows; (3) decreased risk of catastrophic wildfire; (prioritized fuel treatment areas near known, occupied habitat to reduce the risk of catastrophic wildfire); (4) managed public recreation; (5) managed campgrounds near butterfly meadows to limit vehicles, tents, and other equipment in confined areas; (6) developed and installed an interpretive kiosk regarding the butterfly at Pines campground to educate campers and visitors; (7) evaluated the potential impact to the butterfly prior to issuing special use permits; (8) managed domestic livestock grazing at levels that minimize impacts to the butterfly; (9) issued a closure order to protect the butterfly from the threat of collection; (10) ensured effective contract administration for projects occurring in butterfly habitat (*i.e.*, monitor project implementation to document conservation measures are being implemented); and (11) implemented best management practices during maintenance of powerline corridors (Service 2004, 2004b, 2004c, 2004d, 2004e, 2002, 2002a, Forest Service 2004b, 2004i, 2002b, 2001, 2000b).

In the proposed rule, we found that existing regulatory mechanisms did not fully protect this species or its habitat on Forest Service lands. Because the Forest Service has implemented many efforts to manage and maintain butterfly habitat, and has the authority and regulations in place to continue such efforts into the future, we now find these efforts contribute significantly to the adequacy of existing regulatory mechanisms.

Private Lands

Private lands play an important role in the butterfly's continued existence. Since publication of the proposed rule, we have found that there are local regulatory mechanisms pertaining to open space on the Village of Cloudcroft's lands (Village of Cloudcroft 2001). As noted above, the Village of Cloudcroft local zoning regulations (i.e., the Village Code) states that Greenbelt Zones shall consist of open space with no structures or commercial signs allowed. Further, there shall be no overnight parking or camping allowed within these areas. Within the Village of Cloudcroft, it is our understanding that native vegetation within greenbelt areas is generally not mowed and, in some areas currently provides suitable butterfly habitat that is occupied (Forest Service 2004e). Although we are not relying a future land transfer in our current review, the Village of Cloudcroft is also proposing to offer 16 ha (40 ac) (some of which contains occupied butterfly habitat) near the Cloudcroft Ski Area in James Canyon to the Forest Service (Service 2004b). In exchange, the Forest Service has allotted 16 ha (40 ac) that is not butterfly habitat to the Village. This would bring additional butterfly habitat under Forest Service management and remove the potential threat of development. The Village has committed to improving the status of the butterfly and contributing to its long-term conservation by: (1) Following their zoning regulations on ''greenbelt zones'' and open space with no structures in recently annexed (and any future annexed) lands; (2) committing to a land exchange with the Forest Service; and (3) providing community education and outreach for the conservation of the butterfly. We

view these actions as adequate existing regulatory mechanisms to minimize the current and future threats to the butterfly.

On October 19, 2004, Otero County passed a resolution committed to conservation of the butterfly (Otero County 2004). This resolution outlines the County's commitment to conservation of the butterfly (Service 2004b, Otero County 2004), and initiated a process that will cause the County to begin amending its existing subdivision ordinance to provide conservation measures for the butterfly. The County has indicated to us that they intend to pass this ordinance in December 2004. As identified in Factor A above, the threat of commercial and private development is not believed to be significant at this time. Therefore, although future developments within butterfly habitat will likely be required to follow the amended subdivision ordinance, and we encourage and support this effort, we have not relied upon the development of a protective ordinance when analyzing the potential threat of this activity in Factor A above.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Insect Control

In the proposed rule, we also determined that the application of carbaryl and *Bacillus thuringensis* (BT) to control insects poses a threat to the butterfly. Carbaryl is considered moderately to highly toxic and is lethal to many non-target insects, whereas BT can kill the larval stage of many insects, including butterflies (Cornell University 1998a, 1998b). The Forest Service stated that any future proposed treatments would need to be analyzed under NEPA, and the suggestion that carbaryl or BT would be used to control these or other forest insects was premature. Although future applications of carbaryl or BT may pose a potential risk to the butterfly, there are no proposals to spray for insect outbreaks currently or in the future (Forest Service 2001, Service 2004b). This action is no longer considered a significant threat to the species.

Extreme Weather

In the proposed rule we identified periodic droughts and atypical weather events as a threat to the butterfly. As noted in our response to comment 3 above, we believe that the species can survive and has persisted despite natural events such as drought since the butterfly evolved in an environment subject to periodic atypical weather events.

Roads

When we proposed the butterfly as endangered we found that roads had the potential to threaten the butterfly (66 FR 46575, September 6, 2001), but the direct and indirect impact on the butterfly was unknown. Similar to other potential threats, we now believe that existing roads are not likely to cause long-term impacts or disrupt metapopulation dynamics based upon the amount of foodplants growing along roads and the presence of butterfly egg masses and larvae observed in these areas (Service 2004b). Thus, we conclude that these impacts are not a significant threat to the long-term viability of the species.

Mescalero Apache Nation

As identified in the proposed rule, it is unknown whether the butterfly is present on the Mescalero Apache Nation lands. These lands are managed by the Mescalero Apache Nation in accordance with tribal goals and objectives and within the framework of applicable laws. These lands are not Federal public lands or part of the public domain. The Mescalero Apache Nation is a sovereign government with inherent powers to make and enforce laws and manage and control its natural resources. To our knowledge, no butterfly surveys have been conducted on Mescalero Apache Nation lands. Therefore, we do not know the status of the butterfly on these lands, the amount or quality of suitable habitat, or the potential activities that may negatively or positively affect the species. Although timber harvest, prescribed burns, and grazing occur on Mescalero Apache Nation lands (i.e., see Service 2004g, Natural Resources Conservation Service 2004, Klinekole 1998), we have no information regarding the presence or significance of any of these or other potential threats to the butterfly on Mescalero Apache Nation lands. We have considered whether the Mescalero Apache Nation lands would be a significant portion of the range. While we have mapped meadows (i.e., potential butterfly habitat) within Mescalero Apache Nation lands which occur between 2,450 and 2,750 meters (8,000 to 9,000 feet), it is unknown whether the butterfly is present on Mescalero Apache lands, and therefore we have very little information to suggest these lands are significant to the butterfly. Therefore, we determine that Mescalero Apache lands do not constitute a significant portion of the range.

Finding and Withdrawal

A variety of projects and conservation measures have been implemented by the Forest Service since 2001 that have reduced or eliminated threats to the butterfly. We have detailed these above in our analysis. Furthermore, since the proposed rule to list the butterfly as endangered was published, information from the Forest Service refined mapping of occupied and unoccupied habitat. This information will assist greatly in planning efforts for individual projects by providing an overall representation to collectively guide activities that will manage and maintain connectivity between patches of suitable butterfly habitat. In addition, we have demonstrated the resiliency of the butterfly and its foodplants by documenting the creation of new habitat where the butterfly is reproducing (the edges of the football field) (Service 2004d).

Based on a thorough analysis of the best available scientific and commercial information available on the butterfly, we have revised our conclusion about the threats to the species. We believe that the two greatest threats we previously identified, catastrophic wildfire and private and commercial development, are no longer significant. We also believe that new information and current management related to the threat of livestock has led to a reduction of this threat. Nonnative vegetation, OHVs, and other recreational activities are being currently managed to minimize impacts on the butterfly. Forest thinning and fuels management projects, in addition to campground reconstruction projects, may have had some short-term impacts, but will result in long-term benefits to the species. We have determined that the factors analyzed above either alone or in combination no longer significantly threaten the species or are of low magnitude. To be considered a threat, a factor must be shown to play a significant role in the dynamics of the species to such an extent that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Based upon the factors analyzed, we determine that the species no longer is in danger of extinction throughout all or a significant portion of its range, nor is it likely to become endangered within the foreseeable future.

This withdrawal of the proposed rule to list the butterfly as endangered is based on our conclusion that the butterfly is resilient to small-scale disturbance, such that the risk to the species has been reduced to a level

below the statutory definition of endangered or threatened. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing the butterfly in determining to withdraw our proposed listing. Based on this evaluation, we are withdrawing our proposal to list the Sacramento Mountains checkerspot butterfly as endangered. As such, we are also withdrawing our proposal of critical habitat for the butterfly.

We will continue to monitor the status of the species through monitoring, management, and project-related analyses (see ''Conservation Plan'' below). Additional information and comments will continue to be accepted on aspects of the species. We encourage interested parties outside of those parties already signatories to the Conservation Plan to become involved in the conservation of the species. For example, the Forest Service will continue to analyze potential project-related impacts on the butterfly through NEPA. Any interested individual or party can review and comment on these documents. We will reconsider our determination in the event that new information indicates that threats to the species are of a considerably greater magnitude than we have identified.

Conservation Plan

As described above, we signed a Memorandum of Understanding with the Village of Cloudcroft, Otero County, and the Forest Service, and cooperatively developed a Conservation Plan. The goal of the Conservation Plan is to provide conservation and management on public and private lands within the range of the butterfly (69 FR 60178). The individual and collective commitments of each of the parties are detailed in the Conservation Plan, and include time and cost estimates and responsible partners. Following the close of the public comment period, we collected the comments for all of the parties involved in the cooperative effort and provided the comments to them at the close of the public comment period. The cooperating parties of the Conservation Plan reviewed, analyzed, and incorporated public comments as they deemed appropriate.

We did not rely upon the implementation of the conservation efforts identified in the Conservation Plan in making our final listing determination for the butterfly because many of the individual conservation efforts have not been completed and would require us to speculate on the certainty of their implementation and effectiveness. As such, we did not analyze the individual conservation efforts as they relate to the Service's Policy for Evaluation of Conservation Efforts When Making Listing Determinations (68 FR 15100, March 28, 2003) (PECE). Nevertheless, we summarize the Conservation Plan here to recognize that all of the parties are proactively looking for opportunities to conserve the butterfly within its range. We applaud the development of the Conservation Plan and believe it will assist in further improving the status of the butterfly and its habitat.

The Conservation Plan provides an in-depth review of the butterfly's life history, habitat requirements, and known threats and further identifies the specific conservation efforts that will assist in management and maintenance of the butterfly and its habitat. Conservation efforts are categorized by the four primary objectives of the Conservation Plan: (1) Protect and manage occupied and unoccupied butterfly habitat on public lands; (2) manage habitat and promote conservation of the butterfly on non-Federal and other private lands through education and outreach; (3) conduct research to fill information gaps and inform continued management; and, (4) provide adequate regulatory protection.

The Conservation Plan explains that long-term conservation of the species requires a thorough understanding of its life history and habitat requirements. Consequently, a step-down outline has been developed to guide research and monitoring to implement an adaptive management plan for the butterfly. The Conservation Plan describes in detail the process of adaptive management and assigns the responsibility to the cooperative team. We believe management of the butterfly will benefit from this process because the effectiveness of conservation measures will be monitored and adjustments will be made based on new information gained.

The Forest Service has been involved in a variety of projects that have implemented measures to conserve the species (Service 2004b). The Conservation Plan represents a continuation of this major commitment on behalf of this Federal land manager that accounts for approximately 50 percent of the known range of the species. Biologists from the Lincoln National Forest's Supervisor's Office and the Sacramento Ranger District have been implementing conservation actions since 1997 and will continue to serve in that capacity for the Conservation Plan (Forest Service 2000c, Service 2004b). Under the Conservation Plan we expect that the Forest Service will continue to allocate resources towards conservation efforts and coordinate with all parties involved with the conservation of the butterfly.

The Conservation Plan also commits Otero County and the Village of Cloudcroft to manage and promote conservation of the butterfly and its habitat on private lands (Service 2004b). As described above, Otero County initiated a process that will cause the County to begin amending its existing subdivision ordinance to provide conservation measures for the butterfly. In addition, the County has committed to promoting public support for butterfly conservation through development and distribution of informational and educational materials (Service 2004b). The Village of Cloudcroft is dedicated to public outreach and education programs to promote conservation of the butterfly. The Village will work with private landowners (in cooperation with the County) to educate landowners about butterfly conservation. This includes, but is not limited to, restoration of areas and planting butterfly food and larval host plants, and communication with landowners through the local newspaper and Village Council Workshops.

The butterfly is currently a priority for the Service's Partners for Fish and Wildlife Program. This program has been working with the Forest Service and non-Federal entities regarding conservation efforts related to the butterfly. For example, the Forest Service gathered New Mexico penstemon seeds from sites on the Lincoln National Forest, and the Service funded a project through the USDA's Plant Materials Center, Los Lunas, New Mexico. This project grew 1,800 New Mexico penstemon, which will likely be planted at the Albuquerque Biological Park for educational and seed source purposes.

All of the parties will assist each other to fill information gaps in the butterfly's basic biology, habitat, distribution, and population biology. The Conservation Plan describes research needs that were developed and prioritized in order to maximize the utility of the information gained such that it can be directly applied to management and conservation of the species. For example, we anticipate that regular monitoring will continue to be conducted by the Forest Service and other parties to the Conservation Plan. This information will be utilized in an adaptive management process to adjust or increase conservation efforts to manage OHV impacts on the butterfly

and its habitat (Service 2004b). Additionally, we intend to coordinate the development and implementation of this and other projects through the Sacramento Mountains Checkerspot Butterfly Conservation Plan Interagency Coordinating Committee (ICC). The cooperators will establish an ICC (see Conservation Plan, Appendix A. Section V, Service 2004b). This Committee will monitor the implementation of the Conservation Plan, provide a forum for exchange of information on the species, will set annual priorities, seek funding sources, and provide feedback to the cooperators. This group will meet at least annually and likely more often in the first few years.

We are confident in the interest and commitment of all parties to the Conservation Plan. We believe the implementation of conservation, management, and monitoring efforts will be beneficial for the butterfly.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 15, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–27841 Filed 12–20–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 244

Tuesday, December 21, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 15, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 1965–A, Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases.

OMB Control Number: 0560–0158.

Summary of Collection: The Farm Service Agency's (FSA) Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. Sections 331 and 335 of the Consolidated Farm and Rural Development Act, authorizes the Secretary of Agriculture to grant releases from personal liability where security property is transferred to approve applicants, grant partial releases and subordinations of mortgages, and provides servicing authority for real estate security.

Need and Use of the Information: FSA will collect information through the use of several forms, which on program will benefit recipient or loan borrower requesting action on security, which they own.

Description of Respondents: Farms; individuals or households; business or other for-profit.

Number of Respondents: 31,366.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 13,964.

Title: Customer Service Comment Card.

OMB Control Number: 0560–0242.

Summary of Collection: Executive Order 12862 directs Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector and implement customer service standards. FSA will collect information using the Customer Service Card. The Customer Service Card will allow customers to comment, either on-the-record or anonymously to FSA's Washington headquarters on the quality of service they receive with respect to FSA programs.

Need and Use of the Information: FSA will collect the name and location of the Service Center visited, date of visit, customer name and address and customer rating of several aspects of the service received. The collected information will be used to monitor customer satisfaction with FSA customer service, information, procedures, and facilities and to provide a means to improve customer service.

Description of Respondents: Individuals or households; farm.

Number of Respondents: 31,000.

Frequency of Responses: Reporting: Other (Ad Hoc).

Total Burden Hours: 2,583.

Rural Housing Service

Title: 7 CFR, part 1955–B Management of Property.

OMB Control Number: 0575–0110.

Summary of Collection: The Farm Service Agency (FSA) and the Rural Business Cooperative Service (RBS) programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONTACT), as amended. FSA Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The Rural Housing Service (RHS) provides credit in the form of Multi-Family Housing loans and Community Facility loans. The RBS program is designed to improve, develop or finance business industry and employment and improve the economic and environmental climate in rural communities. These agencies must collect information on real property taken into custody and chattel property in the agency's inventory.

Need and Use of the Information: Information is obtained from farmers, ranchers and rural residents and is submitted to the local FSA or Rural Development Office where it is used to track and monitor real and chattel property. This information is required to prevent losses to the Government when security property is abandoned or to comply with the provisions of the CONTACT and congressional intent of assuring that acquired properties are sold to beginning farmers.

Description of Respondents: Farms; business or other for-profit; individuals or households.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5.

Agricultural Marketing Service

Title: Livestock & Meat Market News.

OMB Control Number: 0581–0154.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), Section 203(q), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Meat Market News provide a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with 30 states departments of agriculture.

Need and Use of the Information: AMS will collect information on price, supply, and movement of livestock, meat carcasses, meat and pork cuts, and meat by-products. Several agencies, agricultural universities and college use the information collected to keep appraised of the current market conditions and movement of livestock and meat in the United States and to make short and long term market projections.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms; Individuals or households.

Number of Respondents: 450.

Frequency of Responses: Reporting: Other (Daily).

Total Burden Hours: 7,020.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–27910 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–123–1]

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 for the importation of fruits and vegetables.

DATES: We will consider all comments that we receive on or before February 22, 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. 04–123–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–123–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–123–1'' on the subject line.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on regulations associated with the importation of fruits and vegetables, contact Ms. Jeanne Van Dersal, Senior Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737; (301) 734–6653. 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: Importation of Fruits and Vegetables.

OMB Number: 0579–0136.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pests and noxious weeds.

The regulations in Subpart—Fruits and Vegetables (7 CFR 319.56 through 319.56–8) authorize a number of fruits and vegetables to be imported into the United States, under specified conditions, from certain parts of the world. These fruits and vegetables include cole and mustard crops from Ecuador, El Salvador, Nicaragua, and Peru; rhubarb from Guatemala; parsley from Israel and Nicaragua; salicornia from Mexico; mint and rosemary from Nicaragua; Swiss chard from Peru; cantaloupe, honeydew melon, and watermelon from Brazil and Venezuela; Belgian endive, chicory, and endive from Panama; pineapple from South Africa; and peppers from Spain.

Before entering the United States, all of these fruits and vegetables are subject to inspection and disinfection at their port of first arrival to ensure that no plant pests are inadvertently brought into the United States. These precautions, along with other requirements, help ensure that these commodities do not introduce exotic plant pests, such as fruit flies, into the United States.

The regulations require the use of certain information collection activities, including the completion of import permits, phytosanitary inspection certificates, and fruit fly monitoring records.

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 information collection, 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 information collection 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 0.7322 hours per response.

Respondents: U.S. importers of fruits and vegetables and plant health officials of exporting countries.

Estimated annual number of respondents: 822.

Estimated annual number of responses per respondent: 2.2311.

Estimated annual number of responses: 1,834.

Estimated total annual burden on respondents: 1,343 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 14th day of December, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–27880 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–084–1]

Availability of an Environmental Assessment for Field Testing Equine Influenza Vaccine, Live Canarypox Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Equine Influenza Vaccine, Live Canarypox Vector for use in horses. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before January 20, 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. 04–084–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–084–1.
- E-Mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–084–1'' on the subject line.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Louise M. Henderson, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785, fax (515) 232–7120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Merial Limited.

Product: Equine Influenza Vaccine, Live Canarypox Vector.

Field Test Locations: Montana, Oklahoma, Iowa, Missouri, Tennessee, and Florida.

The above-mentioned product is a live canarypox vector that has been genetically modified to express genes from two equine influenza virus strains. The vaccine is for use in horses as an aid in the prevention of disease caused by equine influenza virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 14th day of December 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–27881 Filed 12–20–04; 8:45 am]

BILLING CODE 3410–34–P

ARCTIC RESEARCH COMMISSION

Notice of Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 74th Meeting in Arlington, VA on January 18–19, 2005. The Business Session open to the public will convene at 9 a.m. Tuesday, January 18, the Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 73rd Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Wednesday, January 19, 2005. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, (703) 525–0111 or TDD (703) 306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 04–27854 Filed 12–20–04; 8:45 am]

BILLING CODE 7555–01–M

CENTRAL INTELLIGENCE AGENCY

Notice of Decennial Review of Operational Files Designations

AGENCY: Central Intelligence Agency.

ACTION: Notice of Decennial Review of Operational Files Designations.

SUMMARY: The Central Intelligence Agency (CIA or Agency) is soliciting comments regarding the historical value of, or other public interest in, the CIA files designated by the Director of Central Intelligence (DCI) pursuant to the CIA Information Act of 1984.

DATES: Comments must be received by January 20, 2005.

ADDRESSES: Submit comments in writing to Edmund Cohen, Director of Information Management Services, Central Intelligence Agency, Washington, DC 20505, or by fax to (703) 613–3020.

FOR FURTHER INFORMATION CONTACT: Edmund Cohen, Director of Information Management Services, Central Intelligence Agency, telephone 703–613–1215.

SUPPLEMENTARY INFORMATION: The CIA Information Act of 1984, codified in section 431 of title 50 of the United States Code, authorizes the DCI to exempt operational files of the CIA from the publication, disclosure, search, and review provisions of the Freedom of Information Act. The statute defines operational files as:

1. Files of the Directorate of Operations that document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;

2. Files of the Directorate of Science and Technology that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

3. Files of the Office of Security that document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; except that files that are the sole repository of disseminated intelligence are not operational files.

The CIA Information Act of 1984 requires that, not less than once every ten years, the DCI shall review the exemptions in force to determine whether such exemptions may be removed from any category of exempted files or any portion thereof. The Agency completed its first decennial review exercise in March 1995. The following represents a summary of the general categories of operational files that have been maintained within the Directorate of Operations, the Directorate of Science and Technology, and the Office of Security since the first decennial review:

1. Files of the Directorate of Operations that document the intelligence sources and methods associated with various operational and foreign liaison activities, that document the conduct and management of various operational and foreign liaison activities, and that document the assessment of the viability of potential operational and foreign liaison activities and potential intelligence sources and methods;

2. Files of the Directorate of Science and Technology that document the use of scientific and technical systems in the conduct of and in support of various operational and intelligence collection activities;

3. Files of the Office of Security that document various aspects of the investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence

sources proposed for use in various operational activities.

The CIA is in the process of conducting its second decennial review of its operational files to determine whether any of the previously designated files, or portions thereof, can be removed from any of the specified categories of exempted files. The CIA Information Act of 1984 requires that the decennial review ''include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.'' In accordance with this requirement, the CIA hereby solicits comments for the DCI's consideration during the decennial review of the CIA's operational files regarding the historical value of, or other public interest in, the subject matter of these particular categories of files or portions thereof described above and the relationship of that historical value or other public interest to the removal of previously designated files or any portions thereof from such a classification.

Dated: December 7, 2004.

Edmund Cohen,

Director of Information Management Services, Office of the Chief Information Office.

[FR Doc. 04–27840 Filed 12–20–04; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

C–357–813

Honey from Argentina: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2003, through December 31, 2003. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Administrative Review'' section of this notice. Interested parties are invited to comment on the preliminary results of this administrative review. (*See* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: December 21, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Dara Iserson, AD/CVD Operations, Office 6, U.S. Department of Commerce, Room 7867, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4236 or (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** the countervailing duty order on honey from Argentina. *See Notice of Countervailing Duty Order: Honey From Argentina*, 66 FR 63673. In response to requests for an administrative review of the countervailing duty (CVD) order on honey from Argentina from the Government of Argentina (GOA) and the American Honey Producers Association and the Sioux Honey Association (petitioners), the Department initiated an administrative review for the period January 1, 2003 through December 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 3117 (January 22, 2004) (Initiation Notice).

On March 3, 2004, we issued a questionnaire to the GOA. On April 24, 2004, the GOA submitted its questionnaire response. On June 9, 2004, the Department issued a supplemental questionnaire to the GOA. The GOA submitted its response to the supplemental questionnaire on June 28, 2004. On August 2, 2004, we extended the preliminary results from

September 1, 2004, until not later than December 13, 2004. See *Notice of Extension of Time Limit for the Preliminary Results of Countervailing Duty Administrative Review: Honey From Argentina*, 69 FR 48222 (August 9, 2004). On September 23, 2004, the Department issued a second supplemental questionnaire to the GOA. The GOA submitted its response to the supplemental questionnaire on October 5, 2004. On October 20, 2004, the Department issued a third supplemental questionnaire to the GOA. The GOA submitted its response to the supplemental questionnaire on November 5, 2004.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we intend to conduct verification of the GOA's questionnaire responses following the issuance of the preliminary results.

Scope of the Order

The merchandise covered by this order is artificial honey containing more than 50 percent natural honeys by weight, preparations of natural honey containing more than 50 percent natural honeys by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, combs, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Subsidies Valuation Information

A. Aggregation

Under section 777A(e)(2)(B) of the Act, the Department may calculate a single country–wide rate applicable to all exporters if the Department determines it is not practicable to determine individual countervailable subsidy rates due to the large number of exporters or producers involved in the investigation or review. In the countervailing duty (CVD) investigation of honey from Argentina, the Department solicited information from the GOA on an aggregate or industry–wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of honey in Argentina. *See Memorandum to the File, Countervailing Duty Investigation of Honey from Argentina: Conducting the Investigation on an Aggregate Basis*, dated November 22, 2000. We also conducted the first administrative review on an aggregate basis. *See Honey from Argentina: Final Results of Countervailing Duty Administrative Review*, 69 FR 29518 (May 24, 2004). As noted above, in accordance with 19 CFR § 351.213(b)(2), the GOA requested an administrative review of this countervailing duty order. (*See Initiation Notice.*) No individual exporters requested the review pursuant to 19 CFR § 351.213(b). Accordingly, the Department is conducting this review of the order on an aggregate basis and will calculate a single country–wide subsidy rate for 2003 to be applied to all exports of the subject merchandise. *See* section 777A(e)(2)(B) of the Act.

Allocation Period

The average useful life (''AUL'') period for the honey industry as described in 19 CFR§ 351.524(d)(2) is ten years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation
period.

Benchmark Interest Rates and Discount Rates

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, we would normally look for the interest rate a borrower had received on a comparable commercial loan. *See* 19 CFR § 351.505(a)(3)(i). However, since we are conducting this review on the aggregate level, and we are not examining individual companies, we have sought information on the national average interest rates for comparable commercial loans. *See* 19 CFR § 351.505(a)(3)(ii). The GOA provided information compiled by the Central Bank of Argentina showing the national average interest rates for various types of financing: long–term, fixed–rate, denominated in Argentine pesos and in foreign currencies. For each loan program found to be countervailable, we have selected a benchmark from the information provided depending upon the terms and characteristics of the particular loan program.

We are directed by 19 CFR § 351.524(d)(3) regarding the selection of a discount rate for the purposes of allocating non–recurring subsidies over time. Since we are conducting this investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, we are using, as the discount rate, the average cost of long–term fixed–rate loans in Argentina as reported by the GOA. *See* 19 CFR § 351.524(d)(3)(i)(B).

Denominator Issues

The GOA has provided information for 2003 relating to the total volume of honey produced in Argentina; the volume and value, in U.S. dollars, of total honey exports; and, the volume and value, in U.S. dollars, of exports of honey to the United States. The GOA has also broken down, where possible, the export volumes and values according to the province in which the honey was produced. However, the GOA was unable to provide information relating to total domestic sales of honey for 2003. As a proxy for total sales information, the GOA provided data showing the volume of honey production by province during 2003. However, the GOA stated that it could not provide the value of production for 2003. Consistent with the investigation and first administrative review, we calculated a proxy for the value of the total production reported by the GOA using the volume and value data provided for exports to the United States. *See Notice of Final Affirmative Countervailing Duty Determination: Honey from Argentina*, 66 FR 50613 (October 4, 2001) (*Honey Final Determination*), and the accompanying Issues and Decision Memorandum (*Honey Issues Memo*), at ''Denominators.'' We divided the value of Argentine honey exports to the United States by the volume of those exports to calculate a per kilogram value in U.S. dollars. We then multiplied this per kilogram value by the provincial production data provided to arrive at the value of total Argentine honey production during 2003. We have used this total production value as our denominator when calculating the subsidy from domestic subsidy programs provided by the GOA, and we have used the relevant provincial production value as our denominator when calculating the subsidy from domestic subsidies provided at the provincial level. We have used the total or provincial export values, as appropriate, as our denominators when calculating the subsidy from programs we have determined to be export subsidies.

To determine the final subsidy from each provincial program that is attributable to exports of honey to the United States, we applied the same methodology that we applied in *Honey Final Determination and Honey Final Results: First Administrative Review*: (1) for provinces for which we have reported data on the volume and value of honey production that was exported, we weight–averaged the subsidies from each provincial program by multiplying each subsidy by the province's share of total honey exports, by value, to the United States during the POR; and (2) for provincial domestic subsidy programs in provinces that do not have reported exports of honey to the United States during the POR, but do have reported honey production during the POR, and for which the GOA did not specifically report that the province had no exports to the United States, we divided the benefits by the total value of Argentine honey production during the POR. Where the countervailable subsidy rate for a program was less than 0.005 percent *ad valorem*, the program was not included in calculating the country–wide countervailing duty rate.

As noted above, Argentine honey production and exports have been valued in U.S. dollars. As detailed below, certain Argentine peso–denominated loan programs provided benefits to Argentine honey producers and exporters in Argentine pesos. In such instances, we converted those Argentine peso–denominated benefits into U.S. dollars using the official exchange rate data provided by the GOA.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Federal Programs

1. Regional Productive Revitalization Program

The GOA established the ''Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative'' (Regional Productive Revitalization Program) to strengthen the economies of small and medium–sized towns in the Argentine interior. The program was established in 1995 with funds from the national treasury allocated for use by the provinces. Although the program was administered at the national government level, its objective was to address financial emergencies and regional economic devastation in the provinces. The program discontinued granting new credits in the beginning of 1999. However, it remains operational as long as the loans granted are outstanding and continue to be serviced. The Regional Productive Revitalization Program provided credit for the acquisition of capital goods, technology, working capital, training needs, and technical assistance. During the time the program was fully operational, two Argentine peso–denominated long–term loans were made to honey producers. One of these loans had a balance outstanding during 2003.

In *Honey Final Determination* and *Honey Final Results*: First Administrative Review, we determined that the Regional Productive Revitalization Program was countervailable as a regional subsidy. *See Honey Issues Memo*, at ''Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative.'' There is no new information or evidence of changed circumstances which would warrant reconsidering this finding.

Loans under this program provide a financial contribution under section 771(5)(D) of the Act in the form of a transfer of funds. To determine whether there was a benefit, we compared the interest rate charged on the loan provided under this program to the commercial interest rate for loans that most closely resemble loans under this program. (*See* ''Benchmark Interest Rates and Discount Rates'' above.) Based on this comparison, the amount that the recipient paid was less than the amount the recipient would have paid on a comparable commercial loan that could actually be obtained on the market. Thus, this line of credit provides a benefit under section 771(5)(E) of the Act.

Consistent with our approach in *Honey Final Determination* and *Honey Final Results*: *First Administrative Review*, we are treating these two loans differently for the purposes of calculating the benefit. For the loan with an outstanding balance in 2003, we calculated the Argentine peso–denominated benefit by multiplying the average loan balance outstanding during 2003 by the difference between the loan interest rate charged and the benchmark interest rate. (This loan was fully repaid during the POR). For our benchmark interest rate, we selected from the information provided by the Central Bank of Argentina, a rate for the type of loans that most closely resembled the terms of this program. *See* ''Benchmark Interest Rates and Discount Rates'' above.

For the second loan, in *Honey Final Determination*, we determined that this loan had been forgiven during 1999, the period of investigation (POI), and we therefore, treated the amount of debt forgiven as a grant conferred in that year. *See* 19 CFR § 351.508. To calculate the benefit, we allocated the resulting Argentine peso–denominated grant amount over the AUL of 10 years. *See* section entitled ''Allocation Period'' above. We used an appropriate discount rate, as discussed in the ''Benchmark Interest Rates and Discount Rates'' section, above. To calculate the subsidy rate for this program, we summed the Argentine peso–denominated benefit amounts attributable to the first loan and the Argentine peso–denominated benefit for the POR from the forgiven loan that we are treating as a grant. We then converted the total benefit amount to U.S. dollars using the official exchange rate data provided by the GOA and divided this amount by the U.S. dollar–denominated value of honey produced in Argentina during 2003 to calculate a countervailable subsidy rate of 0.010 percent *ad valorem* for 2003.

2. BNA Financing for the Acquisition of Goods of Argentine Origin

The financing for the Acquisition of Goods of Argentine origin program was established by the Banco de la Nación Argentina (BNA), a bank owned by the GOA, pursuant to Annex B to the BNA Circular No. 10715/I. This line of credit is offered by BNA to companies purchasing capital equipment manufactured in Argentina (defined as having a maximum foreign component of 40 percent). Financing is provided for up to five years, in an amount equal to 80 percent of the purchase price of the equipment not to exceed US$500,000. There was one U.S. dollar–denominated loan granted under this program to a honey producer in 2001 which had a balance outstanding during 2003.

In *Honey Final Results: First Administrative Review*, we found that the BNA Financing for the Acquisition of Goods of Argentine Origin was specific as an import substitution subsidy under section 771(5A)(c) of the Act because this financing was available only for the purchase of Argentine–origin goods. There is no new information or evidence of changed circumstances which would warrant reconsidering this specificity finding.

Loans under this program provide a financial contribution under section 771(5)(D) of the Act in the form of a transfer of funds. To determine whether there was a benefit, we compared the interest rate charged on the loan provided under this program to the commercial interest rate for loans that most closely resemble loans under this program. (*See* ''Benchmark Interest Rates and Discount Rates'' above.) Based on this comparison, the amount that the recipient paid was less than the amount the recipient would have paid on a comparable commercial loan that could actually be obtained on the market. Thus, this line of credit provides a benefit under section 771(5)(E) of the Act.

As discussed in Honey Final Results: First Administrative Review, the Republic of Argentina followed a currency board system under its Convertibility Law of maintaining parity between the Argentine peso and the U.S. dollar until January 2002. On January 6, 2002, Emergency Law No. 25,561 (Law 25,561) ended the one Argentine peso–one U.S. dollar relationship. In addition, Article 6, paragraph 2 of Law 25,561 and Decree 214/2002 established the mandatory restructuring of foreign currency–denominated debts[1] at a relationship of one U.S. dollar–one Argentine peso. This loan was converted from U.S. dollars to Argentine pesos under Law 25,567 and Decree 214/2002.

Because this loan was converted from U.S. dollars to Argentine pesos on January 29, 2002, pursuant to Law 25,567 and Decree 214/2002, in our *Honey Final Results: First Administrative Review* we considered that there was, in effect, a new long–term fixed rate Argentine peso–denominated loan made in 2002. As such, consistent with our approach in *Honey Final Results: First Administrative Review*, we calculated the countervailable subsidy for 2003 in three steps: 1) we multiplied the average Argentine peso–denominated outstanding loan balance during the POR by the difference between the interest rate charged under the program and the appropriate benchmark interest rate for Argentine peso–denominated loans made during 2002; 2) we converted the 2003 Argentine peso–denominated benefit into U.S. dollars using the official annual average exchange rate data provided by the GOA; 3) we divided this U.S. dollar–denominated amount by the U.S. dollar value of total honey production in Argentina during 2003. Using this methodology, we preliminarily find the countervailable subsidy from this program to be less than 0.005 percent *ad valorem* for 2003. Using this methodology, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

B. Provincial Programs

1. Province of San Luis Honey Development Program

The San Luis Honey Development Program promoted honey production to supplement the income of disadvantaged people in underdeveloped areas in the province of San Luis through credit lines. These long–term, fixed rate, and Argentine peso–denominated loans were made as part of a series of annual campaigns which took place from 1994 through 1999.

In *Honey Final Determination and Honey Final Results: First Administrative Review*, the Department found the Province of San Luis Honey Development Program to be a countervailable subsidy. There is no new information or evidence of changed

[1] Law 25,567 and Decree 214/2002 converted all foreign currency-denominated debts except those directly related to the financing of exports.

circumstances which would warrant reconsideration of this finding.

In *Honey Final Determination and Honey Final Results: First Administrative Review*, we treated loans made under this program as loans that had been forgiven during 1999, the POI. *See* 19 CFR § 351.508(a). In the instant review, the GOA reported that the Province of San Luis had not received any interest payments or principal payments from beneficiaries during the POR. Therefore, consistent with our methodology in the investigation and the first administrative review, we have summed the amounts disbursed through the program for the years 1994 through 1999, plus the accrued interest through 1999, when the loans were effectively forgiven. We then allocated this sum over the 10–year AUL. We used the 1999 annual average of long–term, fixed, peso–denominated interest rates as our discount rate. *See* ''Benchmark Interest Rates and Discount Rates,'' and ''Allocation Period'' sections, above.

For the purposes of establishing the countervailable subsidy rate for 2003, we converted the Argentine peso–denominated benefit attributable to 2003 into U.S. dollars using the official exchange rates provided by the GOA. We then divided this amount by the U.S. dollar value of honey production in the Province of San Luis during 2003. We then determined the countervailable subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from San Luis represents of total honey exports to the United States during 2003. Thus, the countervailable subsidy rate attributable to this program for 2003 is 0.015 percent *ad valorem*.

2. Province of Chaco Line of Credit Earmarked for the Honey Sector

The Chaco government's Line of Credit Earmarked for the Honey Sector (Chaco Honey Program) funded efforts to increase honey production in the province. The Chaco government offered long–term, fixed rate, Argentine peso–denominated loans to purchase hives, as well as loans to improve access to new bee breeds and for honey extraction rooms. These loans were made as part of a series of annual campaigns which took place in 1995, 1997, and 1999.

In *Honey Final Determination and Honey Final Results: First Administrative Review*, we determined that loans made through the Chaco Honey Program were *de jure* specific in accordance to section 771(5A)(D)(i) of the Act. *See Honey Issues Memo*, at ''Province of Chaco Line of Credit Earmarked for the Honey Sector.'' There is no new information or evidence of changed circumstances which would warrant the reconsideration of this specificity finding.

Loans under this program provide a financial contribution under section 771(5)(D) of the Act in the form of a transfer of funds. Consistent with *Honey Final Results: First Administrative Review*, we calculated outstanding balances for these loans to include outstanding interest which accrued on these loans. In order to determine whether a benefit existed, we compared the interest rate charged on loans provided under this program to the commercial interest rates for loans that most closely resemble loans under this program. Because these are long–term, fixed rate, Argentine peso–denominated loans, we selected from information provided by the GOA a long–term benchmark from: 1995 to apply to the 1995 tranche; 1997 to apply to the 1997 tranche; and 1999 to apply to the 1999 tranche. Based on this comparison, there is a difference in the amount the recipient of the loan pays on the loan and the amount the recipient would have paid on a comparable commercial loan that the recipient could have actually obtained on the market. Thus, these loans provide a benefit, under section 771(5)(E)(ii)of the Act.

We calculated the amount of the benefit for 2003 in the following steps: 1) we multiplied the average, outstanding, Argentine peso–denominated loan balances for 2003 by the interest rate differential; 2) we converted the resulting Argentine peso–denominated benefit into U.S. dollars using the official exchange rates provided by the GOA; 3) because the GOA was unable to demonstrate that no honey produced in Chaco was exported to the United States in 2003, we divided this U.S. dollar–denominated benefit by the U.S. dollar value of honey production in Argentina during 2003. Thus, the countervailable subsidy rate for 2003 applicable to the Chaco Honey Program is 0.015 percent *ad valorem*.

3. Buenos Aires Honey Program

In 1996, the Province of Buenos Aires created the Buenos Aires Honey Development Program (BAHP) to increase provincial honey production and improve production efficiency and quality. Through the program, the Banco de la Provincia de Buenos Aires (Banco Provincia or BAPRO), a bank owned by the government of the Province of Buenos Aires, provides two types of credit lines to honey producers in the province: the Line of Credit for Working Capital and the Line of Credit for the Acquisition of Capital Goods. Eligibility for both credit lines requires honey producers to enroll in the Province's Registry of Honey Producers. In addition, the Province of Buenos Aires provided Technical Assistance at no charge to honey producers.

In the underlying investigation, we found all three elements of the BAHP to provide countervailable subsidies. *See Honey Issues Memo*, at ''Buenos Aires Honey Program.'' There is no new information or evidence of changed circumstances which would warrant reconsideration of this finding. However, the GOA reported, and we verified in the first administrative review, that no technical assistance was provided under the BAHP during the 2001–2003. *See Honey Final Results: First Administrative Review*.

No new loans were granted to honey producers during the POR under either the working capital or capital goods elements of this program. However, there were capital goods loans made prior to the POR, which had outstanding balances during the POR.

The Line of Credit for the Acquisition of Capital Goods under the BAHP was implemented by the Banco Provincia through Circular ''A'' No. 13,854 in July 1997, pursuant to an agreement between the Banco Provincia and Banco de Inversion y Comercio Exterior S.A. (BICE), and utilizes funding provided through the BICE Norms 006 and 006/1. The BICE is a GOA entity, that functions as a ''second tier'' bank, lending money to other banks (both commercial and other government–owned or controlled banks) for the purpose of implementing government lending programs.

Under this line of credit, beekeepers are eligible to receive long–term financing for the acquisition of capital goods including beehives, new nuclei, inert material, and extraction and processing material, among other goods. Financing for this line of credit carries a maximum repayment term of five years. Interest rates are based on LIBOR, plus a spread added by the BICE, and a spread added by the Banco Provincia. The spreads given by both the BICE and Banco Provincia vary depending upon the repayment schedule of the loan. Although, all of the loans that had outstanding loan balances during the POR were originally provided in U.S. dollars, these balances were converted to Argentine pesos on January 29, 2002, in accordance with Law 25,567 and Decree 214/2002.

In the instant review, the GOA reported that the Banco Provincia classified certain loans made under this line of credit as active with outstanding

balances payable during 2003. The GOA also reported the Banco Provincia had categorized other loans with balances outstanding in 2003 as in default or cancelled. In addition, the GOA reported that certain loans with outstanding balances payable during 2003 had been assigned to a trust created by the Province of Buenos Aires for defaulted loans.

For loans that the Banco Provincia considered to be active, we calculated the Argentine peso–denominated benefit for the loan by multiplying the average loan balance outstanding during 2003 by the difference between the loan interest rate charged and the benchmark interest rate. For our benchmark interest rate, we selected, from the information provided by the Central Bank of Argentina, a rate for the type of loans that most closely resembled the terms of this program. *See* ''Benchmark Interest Rates and Discount Rates'' above.

As noted above, the GOA reported the Banco Provincia had categorized certain loans with balances outstanding in 2003 as in default, cancelled, or as having been ''assigned to trust created by the Province of Buenos Aires for defaulted loans.'' We therefore find that these loans had been forgiven during 2003 and treated the amount of debt forgiven as a grant conferred in 2003. *See* 19 CFR § 351.508. To calculate the benefit, we have allocated the resulting Argentine peso–denominated grant amount over the AUL of 10 years. *See* section entitled ''Allocation Period'' above. We have used an appropriate discount rate, as discussed in the ''Benchmark Interest Rates and Discount Rates'' section, above.

We calculated the total countervailable subsidy for 2003 from the Buenos Aires Honey program as follows: 1) we summed the Argentine peso–denominated benefits attributable to active loans and forgiven debt and converted the sum into U.S. dollars using the official exchange rates provided by the GOA; 2) we divided this total 2003 benefit by the value of honey production in the Province of Buenos Aires during 2003; and 3) we determined the subsidy attributable to subject merchandise from this program by multiplying the calculated subsidy rate by the percentage that honey from the Province of Buenos Aires represents of total honey exports to the United States during 2003. *See* section entitled ''Denominator Issues'' above. Thus, we preliminarily determine the countervailable subsidy rate from the Buenos Aires Honey Program for 2003 is 0.038 percent *ad valorem*.

II. Programs Preliminarily Determined to be Not Used

We preliminarily determine that Argentine producers and exporters of honey to the United States did not apply for or receive benefits under the following programs during the POR.

A. Federal Programs

1. Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)
2. BICE Norm 001: Financing of Production of Goods Destined for Export
3. BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects to Restructure and Modernize the Argentine Industry
4. BNA Line of Credit to the Agricultural Producers of the Patagonia
5. BNA Pre–Financing of Exports Regime for the Agricultural Sector
6. Production Pole Program for Honey Producers
7. Enterprise Restructuring Program
8. SGRs - Government Backed Loans Guarantees
9. Fundacion Export AR
10. PROAPI

B. Provincial Programs

1. Buenos Aires Honey Program
a. The Line of Credit for Working Capital
b. Technical Assistance
2. Province of Entre Rios Honey Program
3. Province of Chubut: Province of Chubut Law No. 4430/98
4. Province of Santiago del Estero Creditos de Confinanzas (Trust Credits)

III. Programs Preliminarily Determined To Be Terminated

Factor de Convergencia (Convergence Factor)

Under this program exporters could claim a payment from the GOA for a percentage of the FOB value of the exports. The GOA paid exporters an amount determined according to a formula accounting for the exchange rate between the U.S. dollar and the Euro. The GOA reported that the Convergence Factor program was terminated on January 25, 2002 by Decree 191/2002 and that there were no residual benefits. The GOA also reported that a replacement program has not been implemented. 19 CFR § 351.526(b) defines a program–wide change as a change that is not limited to a single firm and was effectuated by an official act such as a decree. We note that GOA has reported that Decree 191/2002 terminated the Convergence Factor programs for all exports. As such, in accordance with 19 CFR § 351.526(b), we preliminarily find that the Convergence Factor program was terminated in 2002, and that there are no residual benefits attributable to the POR.

Preliminary Results of Administrative Review

In accordance with section 777A(e)(2)(B) of the Act, we have calculated the subsidy rates on an aggregate or industry–wide basis for exports of subject merchandise in this administrative review. We preliminarily determine the total net countervailable subsidy rate is 0.08 percent *ad valorem* for 2003, which is *de minimis*.

If upon issuance of the final results of this administrative review the subsidy rate remains de minimis, the Department will instruct CBP to liquidate shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption from January 1, 2003, through December 31, 2003, without regard to countervailing duties. Also, the rate of cash deposit of estimated countervailing duties will be set at zero percent *ad valorem* for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of this review.

Public Comment

Pursuant to 19 CFR § 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR § 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise extended, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the briefs: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 351.303(f). Also, pursuant to 19 CFR § 351.310, within 30 days of the

date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date of submission of rebuttal briefs, that is, thirty–seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR § 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(1)).

Dated: December 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–27912 Filed 12–20–02; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request Under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

December 15, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain colored open end spun yarns for use in chief weight cotton sweaters cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On October 12, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Bernette Textile Co, LLC of New York, NY, alleging that certain colored open end spun yarns ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and acrylic staple fiber, for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that such apparel made from such yarn be eligible for preferential treatment under the CBTPA.

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 and 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 October 12, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Bernette Textile Co, LLC of New York, NY, alleging that certain colored open end spun yarns ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and acrylic staple fiber, for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that such apparel made from such yarn be eligible for preferential treatment under the CBTPA.

Specifications:

HTS Subheadings: 5206.11.00.00, 5206.12.00.00.

Description: Open end spun yarn of uncombed fibers.

Size: 10 to 31 metric count.

Fiber Content: In chief weight of cotton reclaimed from fabric scraps blended with producer dyed acrylic stable produced under license from Outlast Technologies, Inc.

On October 20, 2004, CITA published a **Federal Register** notice requesting public comments on the request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner (69 FR 61658). On November 5, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

Based upon the ITC report and information provided by the domestic industry, CITA finds that there is domestic capacity and ability to supply colored open end spun yarns of a blend of reclaimed and reprocessed cotton and acrylic staple fiber in commercial quantities and a timely manner. CITA finds that the assertion of a patent or license as a barrier to domestic production of the subject product is not a sufficient reason alone to conclude that the product cannot be supplied by domestic industry in commercial quantities in a timely manner.

On the basis of currently available information and our review of this request, CITA has determined that there is domestic capacity to supply the subject product in commercial quantities in a timely manner. Bernette's request is denied.

James C. Leonard, III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–27911 Filed 12–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/ Environmental Impact Report for the Santa Margarita River Conjunctive Use Project, San DiegoCounty, CA; Correction

AGENCIES: Department of the Navy, DOD. Bureau of Reclamation, DOI.

ACTION: Notice; Correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on November 1, 2004, announcing its intent to prepare an Environmental Impact Statement/ Environmental Impact Report for the Santa Margarita River Conjunctive Use

Project, San Diego County, CA and that there would be three public meetings to collect scoping comments. It should have stated there would be two public meetings to collect scoping comments.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mr. Bill Rohwer, telephone 951–695–5310, fax 951–695–5319, or E-Mail: *wrohwer@lc.usbr.gov.*

Correction

In the **Federal Register** of November 1, 2004, in FR Doc. 69–210, on page 63374, in the second column, correct the **SUMMARY** caption to read:

Two public meetings will be held to collect scoping comments.

Dated: December 15, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–27853 Filed 12–20–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Friday, December 17, 2004, from 8 a.m. to 10:30 a.m. The closed Executive Session will be held from 10:30 a.m. to 12:15 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Naval Academy, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Linardi, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7) and (9) of title 5, United States Code. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: December 14, 2004.

J.H. Wagshul,

Commander, Judge Advocate General Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–27921 Filed 12–17–04; 9:59 am]

BILLING CODE 3810–FF–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 January 20, 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: December 15, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Extension.

Title: National Evaluation of Upward Bound and Upward Bound Math Science.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4,284.

Burden Hours: 853.

Abstract: This request is for continuation of the fifth follow-up survey and transcript collection regular Upward Bound and Upward Bound Math Science studies. These data collections are part of the National Evaluation of Upward Bound that has been on going since 1992. The studies are following a sample of 4,728 participants and control group students through high school and into young adulthood.

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 2620. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–27827 Filed 12–20–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of Title X claims for reimbursement in fiscal year (FY) 2005 and the acceptance of plans for subsequent remedial action.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2005 from eligible active uranium and thorium processing sites for reimbursement under Title X of the Energy Policy Act of 1992. For FY 2005, Congress has appropriated approximately $80 million for reimbursement of certain costs of remedial action at these sites. Because of the amount of unpaid approved claims within the current reimbursement ceilings (approximately $56 million), DOE plans to accelerate the FY 2005 reimbursements to licensees in advance of the April 30, 2005, regulatory deadline, subject to availability of congressional appropriations for prior year claims that have been previously approved. The approved amount of claims submitted during FY 2004 will be paid by April 30, 2005, subject to the availability of funds. If the available funds are less than the total approved claims, these payments will be prorated, if necessary, based on the amount of available FY 2005 appropriations, unpaid approved claim balances (approximately $56 million), and claims received in May 2004 (approximately $25 million).

This notice also announces the DOE acceptance of plans for subsequent decontamination, decommissioning, reclamation, and other remedial action (Plans for Subsequent Remedial Action). If Title X licensees expect to incur remedial action costs for remedial action after December 31, 2007, licensees must submit a Plan for Subsequent Remedial Action during calendar year (CY) 2005 or 2006, and DOE must approve a Plan submitted by a licensee by the end of CY 2007, if the costs incurred after CY 2007 are to be eligible for reimbursement.

DATES: The closing date for the submission of claims in FY 2005 is May 2, 2005. These new claims will be processed for payment by April 29, 2006, together with unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations. Plans for Subsequent Remedial Action may be submitted anytime after January 1, 2005, but no later than December 31, 2006.

ADDRESSES: Claims and Plans for Subsequent Remedial Action should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, National Nuclear Security Administration Service Center, Environmental Programs Department, PO Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, National Nuclear Security Administration Service Center, Environmental Programs Department, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, National Nuclear Security Administration Service Center, Environmental Programs Department.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (*e.g.*, statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington DC on this 14th of December, 2004.

David E. Mathes,

Office of Commercial Disposition Options, Office of Logistics and Waste Disposition Enhancements.

[FR Doc. 04–27864 Filed 12–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 04–121–NG]

Office of Fossil Energy; Cascade Natural Gas Corporation; Order Granting Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that it issued DOE/FE Order No. 2051 granting Cascade Natural Gas Corporation authority to import up to .5 billion cubic feet of natural gas annually from Canada, over a term of five years that began on November 1, 2004. The natural gas will be imported under a Base Contract for Sale and Purchase of Natural Gas with IGI Resources, Inc.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas Regulatory Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 9, 2004.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Global Supply and Security, Office of Fossil Energy.

[FR Doc. 04–27866 Filed 12–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 04–111–NG, 04–104–NG, 04–114–NG, 04–113–NG, 04–108–NG, 04–115–NG, 04–101–NG, 04–116–NG, and 04–120–NG]

Office of Fossil Energy; Duke Energy Trading and Marketing, L.L.C., Marathon LNG Marketing LLC, Alliance Canada Marketing L.P., Montana-Dakota Utilities Co., Cannat Energy, Inc., Sempra Energy Resources, National Fuel Gas, Distribution Corporation, Northwestern Corporation, doing business as NorthWestern Energy, Pemex Gas Y Petroquimica Basica; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2004, it issued Orders granting authority to import and export natural gas, including the import of liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 9, 2004.

R. F. Corbin,

Manager, Natural Gas Regulation, Office of Natural Gas Regulatory Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
2039	11/1/04	Duke Energy Trading and Marketing, L.L.C., 04–111–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, including imported liquefied natural gas from other international sources, beginning on October 31, 2004, and extending through October 30, 2006.
2040	11/8/04	Marathon LNG Marketing LLC, 04–104–LNG.	116 Bcf		Import liquefied natural gas from various international sources, beginning on November 5, 2004, and extending through November 4, 2006.
2041	11/8/04	Alliance Canada Marketing L.P., 04–114–NG.	70 Bcf		Import natural gas from Canada, beginning on November 13, 2004, and extending through November 12, 2006.
2042	11/10/04	Montana-Dakota Utilities Co., 04–113–NG.	10 Bcf		Import natural gas from Canada, beginning on December 1, 2004, and extending through November 31, 2006.
2043	11/12/04	Cannat Energy, Inc., 04–108–NG.	109 Bcf		Import natural gas from Canada, beginning on December 1, 2004, and extending through November 31, 2006.
2044	11/12/04	Sempra Energy Resources, 04–115-NG.	300 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on November 12, 2004, and extending through November 11, 2006
2047	11/17/04	National Fuel Gas Distribution Corporation, 04–101–NG.	7.2 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on January 28, 2005, and extending through January 27, 2007.
2048	11/17/04	NorthWestern Corporation d/b/a NorthWestern Energy, 04–116–NG.	20Bcf		Import and export a combined total of natural gas from and to Canada, beginning on February 7, 2005, and extending through February 6, 2007.
2049	11/23/04	Pemex Gas Y Petroquimica Basica, 04–120–NG.	1,300 Bcf		Import natural gas, including liquefied natural gas, and export natural gas up to a combined total from and to Canada and Mexico, beginning on November 24, 2004, and extending through November 23, 2006.

[FR Doc. 04–27867 Filed 12–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Department of Energy's Fleet Alternative Fueled Vehicle Acquisition

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of availability of the Department of Energy's Annual Report on its alternative fueled vehicle acquisitions for Fiscal Year 2003.

SUMMARY: In compliance with the Energy Policy Act of 1992 and Executive Order 13149, this notice announces the availability of the Fiscal Year 2003 report which summarizes the U.S. Department of Energy's (DOE) compliance with the annual alternative fueled vehicle (AFV) acquisition requirement for its vehicle fleet. Additionally, this report includes data concerning DOE's efforts to reduce petroleum consumption.

ADDRESSES: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of FreedomCAR and Vehicle Technologies, EE–2G, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Shabnam Fardanesh on (202) 586–7011 or *shabnam.fardanesh@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 13211–13219) (EPAct), as amended, and Executive Order (E.O.) 13149 (65 FR 24607, April 2000) require Federal fleets to make 75 percent of their new covered vehicle acquisitions AFVs, beginning in fiscal year 1999. In fiscal year 2003, DOE earned 650 AFV acquisition credits, exceeding the 465 credits (*i.e.*, 75 percent of the 620 covered light-duty vehicles acquired in fiscal year 2003) required to meet the 75 percent EPAct requirement. These 650 AFV credits generated in fiscal year 2003 represent 105 percent of covered acquisitions and 140 percent compliance with the 75 percent requirement. DOE was able to earn AFV acquisition credits in excess of the 75 percent requirement and even in excess of its actual vehicle acquisitions because E.O. 13149 allows agencies to earn extra EPAct credits for the use of zero emission and dedicated AFVs, and through the use of biodiesel fuel. DOE also exceeded its AFV acquisition requirements in fiscal years 1999, 2000, 2001 and 2002, and expects a similar high level of compliance for fiscal years 2004 and 2005.

In addition to emphasizing compliance with EPAct, E.O. 13149 requires the Federal Government to exercise leadership in reducing petroleum consumption by 20 percent by fiscal year 2005 in comparison to a fiscal year 1999 baseline, through fleet fuel efficiency improvements and the use of alternative fuels and AFVs.

DOE's vehicle fleet consumed six percent less petroleum in fiscal year 2003 than in the fiscal year 1999 baseline. DOE fleets used alternative fuels 30 percent of the time in its AFVs in fiscal year 2003, and achieved an increase of three miles per gallon in its new light-duty (non-AFV) vehicle acquisitions.

Pursuant to 42 U.S.C. 13218, DOE and other covered agencies are required to submit to Congress annual reports on their AFV acquisitions. These reports must also be placed on a publicly available Web site and a notice of their availability, including the Web site address, must be published in the **Federal Register**.

The DOE report for fiscal year 2003 may be accessed on the DOE Vehicle Technology Federal Fleet Web site at *http://www.eere.energy.gov/vehiclesandfuels/epact/federal*.

Issued in Washington, DC, on December 10, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 04–27865 Filed 12–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Retulatory Commission

[Docket No. RP00–445–008]

Alliance Pipeline L.P.; Notice of Tariff Filing

December 14, 2004.

Take notice that on November 30, 2004, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 10, proposed to become effective January 1, 2005.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

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 e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3755 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–121–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 14, 2004.

Take notice that on December 9, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, the following tariff sheets to become effective January 10, 2005:

Fourth Revised Sheet No. 323; First Revised Sheet No. 323A; Fourth Revised Sheet No. 324.

CIG states that these tariff sheets add several additional exemptions to the system-wide gas quality standards.

CIG states that copies of its filing have been sent to all firm customers, interruptible 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3759 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–122–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 14, 2004.

Take notice that on December 9, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets, to become effective February 1, 2005:

Second Revised Sheet No. 287A andOriginal Sheet No. 287A.01

El Paso states that these tariff sheets revise El Paso's point re-designation procedures to clarify the quantity that may be re-designated.

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 e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3753 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–2–001]

El Paso Natural Gas Company; Notice of Application

December 14, 2004.

Take notice that on November 15, 2004, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP05–2–001, an amendment, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, to its original application filed on October 5, 2004 in Docket No. CP05–2–000. Specifically, El Paso is seeking to amend its application by submitting the revised Pro Forma Sheet No, 284K.01, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Robert T. Tomlinson, Director, El Paso Natural Company, Post Office Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788 or fax at (719) 667–7534 or Craig V. Richardson, Vice President and General Counsel, El Paso Natural Gas Company; Post Office Box 1087, Colorado Springs, Colorado, 80944 at (719) 520–4829 or fax at (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA(18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 C.F.R. 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: January 4, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3760 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–119–000]

Mojave Pipeline Company; Notice of Propsed Changes in FERC Gas Tariff

December 14, 2004.

Take notice that on December 8, 2004, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 8, 2005:

Second Revised Sheet No. 111;
Fourth Revised Sheet No. 113;
Second Revised Sheet No. 114;
First Revised Sheet No. 116B.

Mojave states that the tariff sheets are filed to remove the tariff provisions applicable to the temporary waiver of the maximum rate ceiling for capacity release transactions that expired on September 30, 2002.

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 e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3757 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–565–002]

Northwest Pipeline Corporation; Notice of Tariff Filing

December 14, 2004.

Take notice that on December 9, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective January 1, 2005:

Third Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 14
First Revised Sheet No. 231–C

Original Volume No. 2

Thirty-Ninth Revised Sheet No. 2.1

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3756 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–120–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 14, 2004.

Take notice that on December 8, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its

FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective January 8, 2005:

Sixth Revised Sheet No. 53;
Twelfth Revised Sheet No. 55;
Sixth Revised Sheet No. 57C;
Eighth Revised Sheet No. 57G;
Fifth Revised Sheet No. 57J; and
Second Revised Sheet No. 57L.

WIC states that the tariff sheets are filed to remove the tariff provisions applicable to the temporary waiver of the maximum rate ceiling for capacity release transactions that expired on September 30, 2002.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3758 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC05–17–000, et al.]

Baltimore Gas & Electric Company, et al.; Electric Rate and Corporate Filings

December 14, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Baltimore Gas & Electric Company

[Docket No. AC05–17–000]

Take notice that on December 10, 2004, Baltimore Gas & Electric Company (BGE) tendered for filing proposed journal entries required to reclassify high voltage assets and accumulated depreciation, from distribution plant accounts to transmission plant accounts.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

2. Madison Windpower, LLC

[Docket No. EG00–103–000]

Take notice that on December 10, 2004, Madison Windpower, LLC filed with the Federal Energy Regulatory Commission a Change in Status regarding its application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

3. Northeast Utilities Service Company, Select Energy, Inc., Select Energy New York, Inc., Northeast Generation Company

[Docket Nos. ER96–496–012, ER99–14–007, ER02–556–004, ER99–4463–003]

Take notice that on December 9, 2004, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service of New Hampshire, Select Energy, Inc., Select Energy New York, Inc., and Northeast Generation Company (collectively, Applicants) jointly filed with the Commission an amendment to the market power analysis they jointly submitted on September 27, 2004. NUSCO states that this filing is in response to a request from the Commission Staff dated November 18, 2004.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

4. New Mexico Electric Marketing, LLC

[Docket No. ER02–77–002]

Take notice that on December 10, 2004, New Mexico Electric Marketing, LLC, (NewMex), submitted for filing with the Commission its triennial updated market analysis and a revision to its Rate Schedule FERC No. 1 to conform the market behavior rules to those set forth in the Commission's order on rehearing issued May 19, 2004 in Docket No EL01–118–003, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 107 FERC ¶61,175 (2004).

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

5. New York Independent System Operator, Inc.

[Docket No. ER03–647–006]

Take notice that on December 2, 2004, New York Independent System Operator, Inc. (NYISO) submitted for filing a second annual report on the implementation of the ICAP Demand Curves, and on the withholding behavior under the ICAP Demand Curves in compliance with the Commission's previous order in the Docket No. ER03–647–000.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements and the New York State Public Service Commission and the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: 5 p.m. Eastern Time on December 23, 2004.

6. Empire Connection, LLC

[Docket No. ER03–1353–000]

Take notice that on December 9, 2004, Empire Connection LLC (Empire Connection) tendered for filing a withdrawal of its notice of formation, submission of rate tariff, procedures for implementation of standards of conduct, standards of conduct, and notice of change in status, originally submitted on September 11, 2003.

Comment Date: 5 p.m. Eastern Time on December 30, 2004.

7. Unitil Energy Systems, Inc.

[Docket No. ER05–320–000]

Take notice that on December 9, 2004, Unitil Energy Systems, Inc. (UES) tendered for filing a wholesale market based rate tariff. UES requests an effective date of December 10, 2004.

UES states that a copy of the filing was served on the New Hampshire Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on December 30, 2004.

8. Mantua Creek Generating Company, L.P.

[Docket No. ER05–321–000]

Take notice that on December 10, 2004, Mantua Creek Generating Company, L.P. (Mantua Creek) submitted a notice of cancellation of FERC Electric Tariff, Original Vol. No. 1, effective September 30, 2004.

Mantua Creek states that its notice of the proposed cancellation has not been served on any party because Mantua Creek Generating Company, L.P. is not currently engaged in any sales of electric power or entered into any power or related contracts with any purchasers.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

9. Dispersed Generating Company, LLC

[Docket No. ER05–322–000]

Take notice that on December 10, 2004, Dispersed Generating Company, LLC (Dispersed Generating) submitted a notice of cancellation of FERC Electric Tariff, Original Vol. No. 1, effective October 9, 2003 in Docket No. ER04–72–000.

Dispersed Generating states that the notice of the proposed cancellation has not been served on any party because Dispersed Generating Company, LLC is not currently engaged in any sales of electric power or entered into any power or related contracts with any purchasers.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

10. New England Power Pool

[Docket Nos. OA97–237–018, OA97–608–008, ER97–1079–009, ER97–4421–008, ER97–4421–008, ER98–499–007]

Take notice that on December 10, 2004, the New England Power Pool (NEPOOL) Participants Committee submitted for filing supplemental information. NEPOOL Participants Committee states that this filing supplements and revises NEPOOL's July 30, 2004 information filing related to transmission charges and charges for scheduling, system control and dispatch service calculated and charged to Transmission Customers in accordance with the NEPOOL Open Access Transmission Tariff. The NEPOOL Participants Committee further states that the July 30, 2004 information filing was accepted by the Commission for informational purposes by Commission's letter order issued October 18, 2004. The NEPOOL Participants Committee also states that both filings have been made in compliance with the requirements of the April 5, 1999 settlement agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions, as well as the parties to the captioned dockets.

Comment Date: 5 p.m. Eastern Time on January 3, 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3752 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 14, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project Number:* P–2426–191.

c. *Date Filed:* October 26, 2004.

d. *Applicant:* California Department of Water Resources and City of Los Angeles.

e. *Name of Project:* The Tehachapi East Afterbay Project.

f. *Location:* The project is located in Kern, Los Angeles, San Bernardino, and Ventura Counties in Southern California. The project does not occupy any federal or tribal lands. The proposed non-project use would be located in southern Kern County, nine miles east of Gorman, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mary Miller, Department of Water Resources, Southern District, 770 Fairmont Avenue, Suite 102, Glendale, CA 91203–1035. Phone: (818) 543–4698.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles at (202) 502–8763, or by e-mail: *lynn.miles@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 3, 2005.

k. *Description of the Application:* The project licensee requests Commission authorization to construct a new afterbay facility near the bifurcation of the East Branch and West Branch of the California Aqueduct. The project would provide additional storage to the existing Tehachapi Afterbay, thereby allowing pumping operations of the Valley String Pumping Plants, specifically Buena vista, Teerink, Chrisman, and Edmonston Pumping Plants, to be shifted from peak (high demand) periods to off-peak (low demand) periods, resulting in operational costs savings and more stable energy use statewide.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at

http://www.ferc.gov using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *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.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–1494–259). 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *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.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3754 Filed 12–20–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0022, FRL–7850–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Technology Performance and Product Information To Support Vendor Information Summaries, EPA ICR Number 2154.02, OMB Control Number 2050–0194

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. 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 February 10, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0022, to EPA online using EDOCKET (our preferred method), by e-mail to *ord.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, ORD Docket, 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eric N. Koglin, Environmental Protection Agency, P.O. Box 93478, Las Vegas, Nevada 89193–3478; telephone number: 702–798–2332; fax number: 702–798–2291; e-mail address: *koglin.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number ORD–2004–0022, which is available for public viewing at the ORD 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 ORD 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 vendors and developers of technologies (commercially available and those under development) that are intended to be used to decontaminate structures (*e.g.*, buildings (interior and exterior) and water distribution systems) contaminated with chemical, biological, or radiological materials and technologies for use in detecting, measuring, and monitoring these same materials in air, on surfaces, and in water.

Title: Technology Performance and Product Information to Support Vendor Information Summaries.

Abstract: The U.S. EPA Office of Research and Development's National Homeland Security Research Center

(NHSRC) is helping to protect human health and the environment from adverse impacts resulting from intentional acts of terror. With an emphasis on decontamination and consequence management, water infrastructure protection, and threat and consequence assessment, NHSRC scientists and engineers are working to develop tools and information that will help detect the intentional introduction of chemical, biological, and radiological contaminants in buildings or water systems, the containment of these contaminants, the decontamination of buildings and/or water systems, and the disposal of material resulting from cleanups. With a substantial background in environmental protection and risk management, NHSRC researchers are well-positioned to develop the tools and technologies needed to respond to existing and potential terrorist threats. The focus of these efforts is aimed at providing advice, guidance, and scientific expertise on homeland security issues to emergency response personnel, consequence managers, decision-makers, and government officials that will result in improved protection for all citizens.

An important facet of the NHSRC mission is identifying, testing, and evaluating technologies to support water utility operators, emergency responders, and facility managers. EPA lacks a well documented array of technological tools to adequately address all of the monitoring, detection, decontamination, and treatment tasks associated with remediating contaminated facilities and drinking water supply systems. EPA is aware that significant research, development, and commercialization efforts are underway by the private sector, but EPA needs to manage the information concerning the myriad of technology choices faced by its customers.

EPA has initiated this effort to develop brief vendor information summaries of available technologies relevant to the detection and decontamination of drinking water systems, building materials, building structures, and indoor air that may become contaminated with chemical, biological, or radiological contaminants. These summaries will be based upon vendor-generated or provided information including any independent, validated test data generated by governmental or other organizations and provided to EPA through this ICR.

EPA will produce 4–10 page summaries on each of the technologies for which vendors voluntarily agreed to submit the requested information. These summaries will be shared with EPA and other emergency response personnel, building and facility managers, and water utility operators. The information provided by technology developers and vendors will also be used by the NHSRC's Technology Testing and Evaluation Program (TTEP) to identify technologies that may be suitable candidates for testing and evaluation and to track those technologies under development that may eventually be ready for rigorous testing and evaluation. Developers and vendors with applicable technologies are being searched through all available mechanisms. Once identified, the developer or vendor is sent a letter requesting the submission of specific information pertinent to the performance, operation, maintenance, and cost of the technology.

The submission of information is voluntary. Because the summarized information will be publically available, technology vendors/developers will be discouraged from submitting CBI. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that 150 technology developers or vendors will annually respond to this request for information. EPA assumes that the vendors or developers have data supporting their claim of efficacy, but will not require that it be generated if that is not the case. EPA estimates 1–4 hours of time (average 2.5 hours) will be expended by the companies collating existing information, photocopying, and submitting packages to EPA. The request letter will require the recipient to devote time (*i.e.*, as measured by staff man-hours) and resources (*i.e.*, to copy documents and mail responses) to produce acceptable responses. EPA expects that the companies will be photocopying existing information, test results, and testing procedures as well as product literature, to respond to this request for information and, where possible, submitting documents electronically.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 13, 2004.

Andrew P. Avel,

Acting Director, National Homeland Security Research Center.

[FR Doc. 04–27885 Filed 12–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0009; FRL–7851–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules (Renewal), EPA ICR Number 1896.05, OMB Control Number 2040–0204

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2004. Under OMB regulations, the Agency may

continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 20, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0009, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard P. Naylor, Office of Ground Water and Drinking Water, (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202.564.3847; fax number: 202.564.3755; e-mail address: *naylor.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 30, 2004 (69 FR 23740), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0009, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to 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 and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules (Renewal).

Abstract: This ICR examines public water system (PWS), primacy agency, and EPA burden and costs for recordkeeping and reporting required in support of the chemical regulations. These rules, which have recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Parts 141 and 142, include the following: the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR); the Chemical Phase Rules (Phases II/IIB/V); the Unregulated Contaminant Monitoring Rule (UCMR), Lists 1 and 2; the 1976 Radionuclides Rule and 2000 Radionuclides Rule; the Total Trihalomethanes (TTHM) Rule; the Disinfectant Residual Monitoring and Associated Activities under the Surface Water Treatment Rule (SWTR); Arsenic Rule; and the Lead and Copper Rule (LCR). Future chemical-related rulemakings, such as Radon and the Stage 2 DBPR, will be added to this ICR after the regulations are finalized and the initial, rule-specific, ICRs have expired.

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 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the 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.

Respondents/Affected Entities: (1) Owners/operators of PWSs who must report to the primacy agency; (2) Primacy agencies that must report to EPA; and (3) Regional EPA administrators, who must send reports and notices to PWS owners and states.

Estimated Number of Respondents: 161,274.

Frequency of Response: as necessary, monthly, quarterly, annually, semiannually, biennially, triennially, six years, nine years.

Estimated Total Annual Hour Burden: 6,427,048.

Estimated Total Annual Cost: $379,817,000, includes $194,768,000 annualized capital or O&M costs and $185,049,000 annual labor costs.

Changes in the Estimates: There is an increase of 309,113 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is primarily due to the restructuring adjustment for the previously approved stand-alone Arsenic ICR and is offset by reductions to individual rule burdens (*e.g.*, updated system inventories and different monitoring requirements during the ICR period).

Dated: December 14, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–27887 Filed 12–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0016; FRL–7851–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Petroleum Refineries (Renewal), ICR Number 1692.05, OMB Number 2060–0340

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 20, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0016, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; e-mail address: *chadwick.dan@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004, (69 *FR* 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0016, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Enforcement and Compliance Docket and Information Center 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 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. When 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 and OMB within 30 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.*

Title: NESHAP for Petroleum Refineries (40 CFR part 63, subpart CC) (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) From Petroleum Refineries, published at 40 CFR part 63, subpart CC, were proposed on July 15, 1994, and promulgated on August 18, 1995. These regulations apply to the following existing and new petroleum refining process units and emission points located at refineries that are major sources of HAPs: miscellaneous process vents, storage vessels, wastewater streams and treatment operations, equipment leaks, gasoline loading racks, and marine vessel loading operations. These regulations also apply to storage vessels and equipment leaks associated with bulk gasoline terminals or pipeline breakout stations that are related to an affected petroleum refinery. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart CC.

Respondents are required to submit one-time reports of start of construction, anticipated and actual start-up dates, and physical or operational changes to existing facilities. In addition, respondents must submit three types of reports: (1) Notification of Compliance Status, (2) Periodic Reports, and (3) Other event triggered reports. The Notification of Compliance Status is submitted to provide the information necessary to demonstrate that compliance has been achieved. The Periodic Reports provide information on monitored control device parameters when they are outside of established ranges and information on instances where inspections revealed problems. In addition, respondents are required to comply with the recordkeeping and reporting requirements contained in the following rules: either 40 CFR part 61, subpart VV or 40 CFR part 63, subpart H for equipment leaks (which include an initial report and semiannual summaries of leak detection and repair); 40 CFR part 61, subpart FF for wastewater operations; portions of 40 CFR part 63, subpart R for gasoline loading racks; and 40 CFR part 63, subpart Y for marine tank vessel loading operations. All records are to be maintained at the facility for at least 5 years.

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 are listed in 40 CFR part 9 and 48 CFR Chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 839 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain,

or disclose or provide information to or for a Federal agency. This includes the 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.

Respondents/Affected Entities: Petroleum refineries that are major sources of HAP emissions.

Estimated Number of Respondents: 134.

Frequency of Response: Annual, Semiannual, On Occasion, Quarterly.

Estimated Total Annual Hour Burden: 410,054 hours.

Estimated Total Annual Costs: $26,163,236, which includes $0 annual capital/startup costs, $0 annual O&M costs, and $26,163,236 annual labor costs.

Changes in the Estimates: There is a decrease of 59,376 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This adjustment decrease in burden is due to several factors, including: a decrease in the number of respondents, the removal of capital/startup costs resulting from performance tests, and revisions to the approach to calculating costs for newly subject facilities.

Dated: December 14, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–27889 Filed 12–20–04; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board

ACTION: Notice of Members of the U.S. Equal Employment Opportunity Commission Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the PRB for the Equal Employment Opportunity Commission (EEOC). The Board reviews the performance appraisals of career and non-career senior executives. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

FOR FURTHER INFORMATION CONTACT: Angelica E. Ibarguen, Chief Human Capital Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4306.

Composition of PRB: The Board shall consist of at least three voting members. When appraising a career appointee's performance or recommending a career appointee for a performance award, more than half of the members must be SES career appointees. The names and titles of the PRB members are as follows:

Primary Members

Angelica E. Ibarguen, Chief Human Capital Officer, EEOC—(Chairperson), Reuben Daniels, Jr., Director, Charlotte District Office, EEOC—(Member), James L. Lee, Deputy General Counsel, EEOC—(Member).

DATES: Membership is effective on the date of this notice.

Signed at Washington, DC on this 22nd day of November 2004.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 04–27855 Filed 12–20–04; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–98; DA 04–3678]

Parties Asked To Refresh the Record Regarding a Petition by the New York State Public Service Commission Seeking Broad Delegated Authority To Make Area Code Changes Outside the Context of Area Code Relief Planning

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: The Commission invites New York State Public Service Commission (NYPSC) to update the record pertaining to its petition seeking delegated authority to make area code changes outside the context of area code relief planning and invites interested parties to submit pleadings pertaining to the NYPSC petition.

DATES: Comments are due on or before January 4, 2005. Reply Comments are due on or before January 11, 2005.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice released November 23, 2004 in CC Docket No. 98–98; DA 04–3678. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. Pursuant to § 1.1 of the Commission's rules, the Commission invites the NYPSC to update the record pertaining to its petition seeking delegated authority to make area code changes outside the context of area code relief planning and invites interested parties to submit pleadings pertaining to the NYPSC petition.

In the *Local Competition Second Report and Order,* the Commission delegated authority to implement new area codes to state commissions in the context of area code relief planning. The Commission noted that state commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. Each state's implementation method is, however, subject to the Commission's guidelines for numbering administration. Existing Commission guidelines, which were originally enumerated in the *Ameritech Order*, state that numbering administration should: (1) Seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.

The NYPSC petitioned the Commission for delegated authority to make area codes changes outside the context of area code relief planning. Because the passage of time and intervening developments may have rendered the record developed for this petition stale, the Wireline Competition Bureau requests that the NYPSC identify whether the pursuit of area code relief outside the context of area code relief planning remains an issue. Also, some issues raised in the petition may have

become moot or irrelevant in light of intervening events.

To the extent that intervening events may have materially altered the circumstances surrounding the petition or the relief sought by the NYPSC, the NYPSC may refresh the record with new information or arguments related to its original filing that it believes to be relevant to the issues. The previously filed petition will be deemed withdrawn and will be dismissed if the NYPSC does not indicate in writing an intent to pursue its petition.

The NYPSC may update its previously filed comments on or before January 4, 2005. Reply Comments are due on or before January 11, 2005. All pleadings are to reference CC Docket No. 92–105. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

One (1) courtesy copy should also be sent to Sheryl Todd, Wireline Competition Bureau, FCC, Room 5–B540, 445 12th Street, SW., Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The original petition for reconsideration that the NYPSC filed in 2001 is available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *www.bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Narda M. Jones,

Chief, Telecommunications Access Policy Division.

[FR Doc. 04–27876 Filed 12–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–3817]

Second Audit Letter and Notice of Cancellation to Certain Licensees in the Paging and Radiotelephone Service and Certain Licensees Operatng on 929–930 MHz Exclusive Private Carrier Paging Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireless Telecommunications Bureau (Bureau) announces it mailed its second audit letter and notice of cancellation to licensees that did not respond to the first inquiry. The audit involves site-specific licenses operating under part 22, Paging and Radiotelephone Service with ''CD'' radio service code and all site-specific licenses operating in the 929–930 MHz band on exclusive private carrier paging channels with ''GS'' radio service code. Licenses must respond to the audit electronically.

DATES: Responses are due by January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Denise D. Walter, Mobility Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice,* DA 04–3817, released on December 8, 2004. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On December 7, 2004 the Bureau mailed its second audit letter and notice of cancellation to certain licensees operating with site-specific licenses in the Paging and Radiotelephone Service, part 22, subpart E, and site-specific licenses operating on exclusive private carrier paging channels in the 929–930 MHz band, part 90, subpart P.

2. Each licensee to whom this second audit letter and notice of cancellation was mailed must respond and certify by January 21, 2005 that its authorized

station(s) has not permanently discontinued operations pursuant to 47 CFR 22.317.

3. Audit letters were mailed to licensees at their address of record in the Universal Licensing System. If a licensee receives more than one audit letter, they must respond to each letter sent by the Commission in order to account for all of its call signs that are part of the audit. Licensees can use the *Audit Search* at *http://wireless.fcc.gov/licensing/audits/paging* to determine if a particular call sign is part of the audit. If the *Audit Search* shows a letter was mailed, the licensee is required to respond to the audit even though the audit letter may not have been received. For instructions on how to proceed in this instance, licensees should call the Bureau's hot line at 877–480–3201.

4. The process for responding to the audit was included in the second audit letter and specific instructions are provided on the certification page of the audit response module. A response is mandatory and must be submitted electronically by January 21, 2005. Failure to provide a timely response to the second audit letter and notice of cancellation may result in the Commission presuming that the station has been non-operational as defined under 47 CFR 22.317, and thus the license may be presumed to have automatically cancelled. Failure to provide a timely response may also result in enforcement action, including monetary forfeiture, pursuant to Section 503(b)(1)(B) of the Communications Act and 47 CFR 1.80(a)(2).

Federal Communications Commission.

Roger Noel,

Division Chief, Mobility Division.

[FR Doc. 04–27874 Filed 12–20–04; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 4, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Joel D. Neisen, Burnsville, Minnesota, Jeffrey A. Neisen, Vadnais Heights, Minnesota, Timothy J. Neisen, Ormsby, Minnesota, Mary K. Laxen, Shakopee, Minnesota, and Brian J. Neisen, Sugar Land, Texas; to acquire control of Ormsby Bancshares, Inc., Ormsby, Minnesota, and thereby indirectly acquire Ormsby State Bank, Ormsby, Minnesota.

Board of Governors of the Federal Reserve System, December 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27830 Filed 12–20–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 14, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Liberty Bancshares, Inc., Jonesboro, Arkansas; to acquire 100 percent of the voting shares of TrustBanc Financial Group, Inc., Mountain Home, Arkansas, and thereby indirectly acquire TrustBanc, Mountain Home, Arkansas.

Board of Governors of the Federal Reserve System, December 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27829 Filed 12–20–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—11/15/2004			
20050145	Albert Frere	Rosemore, Inc	Crown Central Petroleum Corporation
20050152	Leonard Riggio	Barnes & Noble, Inc	Barnes & Noble, Inc.
20050158	Seaport Capital Partners, II, L.P	Robert and Kathleen Titsch	National Training Institute, Ltd.; Taurus Publishing Inc.; Virgo Publishing, Inc.
20050168	MBNA Corporation	AmSouth Bancorporation	AmSouth Bank.
Transactions Granted Early Termination—11/16/2004			
20050146	Baton Holdco I L.L.C	H. Wayne Huizenga	Boca Resorts, Inc.
20050160	Cruise Luxco 1 S.a.r.l	EQT II	Thule AB
20050161	Mitsui & Co., Ltd	Cornerstone Nutritional Labs, L.C	Cornerstone Nutritional Labs, L.C.
20050163	American Capital Strategies, Ltd	Lafayette Investment Parallel Fund, L.P.	Hospitality Mints LLC
Transactions Granted Early Termination—11/18/2004			
20050157	Odyssey Investment Partners Fund, L.P.	Ronald V. Valenta	Portosan Company, L.L.C.; Redwood Sanitary Services, Inc.
20050164	Thomas Weisel Capital Partners, L.P	Glenn W. Johnson III	Aircast Incorporated.
Transactions Granted Early Termination—11/19/2004			
20050101	Bayer A.G	Robert Taub	Opperbas Holdings B.V.
20050166	Hicks, Muse, Tate & Furst Equity Fund V, L.P.	Charlesbank Equity Fund V, Limited Partnership.	Regency Gas Services LLC
Transactions Granted Early Termination—11/22/2004			
20050175	Wilh. Werhahn KG	Mr. Dal LaMagna	Tweezerman Corporation
20050178	Schering-Plough Corporation	ViroPharma Incorporated	ViroPharma Incorporated.
20050179	Bayer AG	Roche Holding Ltd	Bayer-Roche LLC
20050181	Onex Partners LP	Brockway Moran & Partners, Inc	BMP/CEI Holdings, Inc.
20050182	Genstar Capital Partners III, L.P	Colfax Corporation	Colfax Corporation.
20050186	Les Domaines Barons de Rothschild (Lafite) S.C.A.	The Chalone Wine Group, Ltd	The Chalone Wine Group, Ltd.
20050188	Platinum Equity Capital Partners, L.P	General Electric Company	GE IT Solutions, Inc.
20050206	Media/Communications Partners III Limited Partnership.	Roy Mayers	Merrimack M&R Realty LLC; Options Publishing, Inc.
Transactions Granted Early Termination—11/23/2004			
20050187	Questor Partners Fund II, L.P	Polar Corporation	Polar Corporation.
20050190	First Horizon National Corporation	The Goldman Sachs Group, Inc	Spear, Leeds & Kellogg, L.P.
Transactions Granted Early Termination—11/24/2004			
20041154	Kenneth R. Thomson	Information Holdings Inc	Information Holdings Inc.
Transactions Granted Early Termination—11/26/2004			
20050212	Regis Corporation	Hair Club Group Inc	Hair Club Group Inc.
Transactions Granted Early Termination—11/29/2004			
20050211	Mr. Francisco Riberas Pampliega	MatlinPatterson Global Opportunities Partners L.P.	Oxford Automotive Alabama, Inc.; Oxford Automotive, Inc.
20050219	BP p.l.c	Salvay S.A	BP Solvay Olefins, L.P.; BP Solvay Polyethylene North America
Transactions Granted Early Termination—11/30/2004			
20050192	Cajun Holding Company	AFC Enterprises, Inc	AFC Enterprises, Inc.
20050201	Asia Opportunity Fund, L.P	Futuris Corporation Ltd	Air International (US) Inc.
20050207	AMERIGROUP Corporation	Careplus, LLC	Careplus, LLC.
20050214	Thayer Equity Investors V, L.P	Wind Point Partners III, L.P	Qualitor, Inc.
20050217	Blackstone Capital Partners (Cayman) IV, L.P.	Glass Holdings Limited	Gerrresheimer Beteiligungs GmbH
20050223	Richard B. Handler	Jefferies Group, Inc	Jefferies Group, Inc.
20050224	Legg Mason, Inc	Deutsche Bank AG	Deutsche Investment Management Americas, Inc.

Trans No.	Acquiring	Acquired	Entities
20050230	Jones Apparel Group, Inc	Barneys New York, Inc	Barneys New York, Inc.
20050235	Enbridge Inc	Royal Dutch Petroleum Company	Mississippi Canyon Gas Pipeline, LLC; Shell Gas Gathering, LLC.
20050236	Francisco Partners, L.P	WRQ, Inc	WRQ, Inc.
20050237	Olympus Growth Fund IV, L.P	K. Brent McGruder	K-Mac Enterprises, Inc.
20050241	GATX Corporation	General Motors Corporation	Locomotive Leasing Partners, LLC.
20050254	ALLTEL Corporation	ALLTEL Corporation	Appleton-Oshkosh-Neenah MSA Limited Partnership.
Transactions Granted Early Termination—12/02/2004			
20050148	Lockheed Martin Corporation	Carlyle Partners III, L.P	Sippican Holdings Inc.
20050205	Time Warner Inc	Gateway, Inc	Gateway, Inc.
20050220	Novo Nordisk Foundation	Aradigm Corporation	Aradigm Corporation.
20050240	Celerity Holding Company, Inc	Kinetics Holdings, LLC	Celerity Group, Inc.; FTS Systems, Inc.; Kinetic Chempure Systems, Inc.
20050243	GTRC Fund VII, L.P	NewQuest LLC	GulfQuest, L.P.; HealthSpring Management, Inc.; HealthSpring of Alabama, Inc.; HealthSpring of Illinois I, Inc.; HealthSpring USA, LLC; HouQuest, LLC; New Quest Management of Alabama, LLC; NewQuest Management of Illinois, LLC; Signature Health Alliance, Inc.; Texas HealthSpring I, LLC; TexQuest, LLC.
20050247	Firmenich International SA	Noville, Inc	Noville, Inc.
20050258	Phillips-Van Heusen Corporation	Vestar Capital Partners III, L.P	Cluett Peabody & Co., Inc.; Cluett Peabody Resources Corporation
Transactions Granted Early Termination—12/03/2004			
20050216	Omnicare, Inc	Clinimetrics Research Associates, Inc	Clinimetrics Research Associates, Inc.
20050231	Alberto-Culver Company	John Tobias	Innovations Successful Salon Services, Inc.
20050232	Alberto-Culver Company	Samuel Licursi	Innovations Successful Salon Services, Inc.
20050233	Rentech, Inc	Royster-Clark Group, Inc	Royster-Clark Group, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative; or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–27851 Filed 12–20–04; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy

Governmentwide Relocation Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing the public meetings of the Governmentwide Relocation Advisory Board for 2005. The Board is examining a wide range of management issues related to relocation polices. Its first priority is to review the current policies promulgated through the Federal Travel Regulation (FTR) for relocation allowances and associated reimbursements. Government Relocation Advisory Board Meetings scheduled for 2005:

January 26, 2005

Location: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC 20008.

Time: 9:00 a.m. to 4:00 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

February 16, 2005

Location: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC 20008.

Time: 9:00 a.m. to 4:00 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

March 23, 2005

Location: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC 20008.

Time: 9:00 a.m. to 4:00 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

May 25, 2005

Location: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC 20008.

Time: 9:00 a.m. to 4:00 p.m. (eastern time). (A public-accessible teleconference line will be available for the entire meeting.)

FOR FURTHER INFORMATION CONTACT: Patrick O'Grady, Designated Federal Officer (DFO), General Services Administration, 1800 F Street NW, Room 1221, Washington, DC 20405, via phone at (202) 208–4493; email at *patrick.ogrady@gsa.gov;* fax at (202) 208–1398, for further information,

including teleconference call-in numbers and access codes, and information on submitting written or brief oral comments that is not mentioned below. General information concerning the Relocation Advisory Board can be obtained on the GSA Web site: *www.gsa.gov/travelpolicy.*

Providing Oral or Written Comments at Board Meetings: GSA will accept written comments of any length, and accommodate oral public comments whenever possible. Public comments may be made at the January 26, or February 12, or March 25 meeting. GSA expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation will be limited to a total time of ten minutes (unless otherwise indicated). Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Mr. O'Grady no later than noon eastern time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the Board and the public at the meeting.

Written Comments: Although the GSA accepts written comments until the date of the meeting, Mr. O'Grady should receive written comments no later than noon eastern time five business days prior to the meeting so that the comments may be provided to the Board for their consideration prior to the meeting. Comments should be provided to Mr. O'Grady at the previously noted address, as follows: one hard copy with original signature, and one electronic copy via e-mail in a Word, WordPerfect, or Adobe Acrobat PDF file. Those providing written comments are also asked to bring 75 copies of the comments to the meeting.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the public meetings for the GSA Governmentwide Relocation Advisory Board. The Administrator of General Services has determined that the establishment of the Board is necessary and in the public interest.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference rooms, should contact the DFO at the phone number or e-mail address noted above at least 10 days prior to the meeting so that appropriate arrangements can be made.

Dated: December 14, 2005.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 04–27828 Filed 12–20–04; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet to review progress and solicit additional comments from the Committee regarding numerous recommendations made over the past year. Specifically, the Committee will hear updates and discuss previous recommendations on Transfusion Related Acute Lung Injury (TRALI) and access to treatment for individuals with rare blood disorders. The Committee will also review the progress made by the AABB (formerly known as the American Association of Blood Banks) Task Force on Bacterial Contamination to identify potential studies to standardize, validate, and determine the predictive value of bacterial testing with the intent to extend the dating of platelet products from five to seven days and the possible pre-storage pooling of whole blood derived platelets. Centers for Medicare and Medicaid Services (CMS) reimbursement issues related to blood and blood products, including plasma-derived therapeutics and their recombinant analogs will be reviewed. In addition, the Committee will be asked to discuss/comment on strategies for addressing infectious agents (known or emerging) that potentially could affect the blood supply.

DATES: The meeting will take place Tuesday, January 25, 2005 and Wednesday, January 26, 2005 from 8 a.m. to 5 p.m. The meeting will be open to the public after 9 a.m. on the first day.

ADDRESSES: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, North Bethesda, Maryland 20852 (301–984–0004). Please note that this is a change in location from the previous two meetings.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, Ph.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Room 250, Rockville, MD 20852 (301) 443–4741, FAX (301) 443–4788, e-mail *jholmberg@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Public comment will be solicited at the meeting and will be limited to five minutes per speaker. Anyone planning to comment is encouraged to contact the Executive Secretary at his/her earliest convenience. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 21, 2005. Likewise, those who wish to utilize electronic data projection to the Committee must submit their materials to the Executive Secretary prior to close of business January 21, 2005.

Dated: December 16, 2004.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 04–27870 Filed 12–20–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Project: Evaluation of the Health Care for the Homeless Respite Pilot Initiative (OMB No. 0915–0269)—Extension

The Bureau of Primary Health Care (BPHC), Health Resources and Services Administration is conducting an extension of an evaluation of the Health Care for the Homeless (HCH) Respite Pilot Initiative. Data are being collected from the ten HCH grantees participating in the Pilot Initiative. The National Health Care for the Homeless Council is conducting the evaluation through a cooperative agreement with the BPHC.

The evaluation focuses on assessing the effect of respite services on the health of homeless people as well as examining any differences in outcomes based on client or program characteristics. The evaluation is being conducted throughout the project period of Pilot Initiative.

The estimated response burden is as follows:

Type of respondent	Number of respondents	Response per respondent	Total responses	Hours per response	Total hour burden
HCH Grantees	10	200	2,000	0.25	500
Program data	10	1	10	.5	5
Total	10		2010		505

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 15, 2004.

Steven A. Pelovitz,

Associate Administrator, Office of Administration and Financial Management.

[FR Doc. 04–27869 Filed 12–20–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19421]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0106

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR)—1625–0106, Unauthorized entry into Cuban territorial waters formerly, ''Unauthorized departure of U.S. vessels and entry into Cuban territorial waters''), 33 CFR part 107—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard on or before January 20, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2004–19421] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, (202) 267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: *Public participation and request for comments:* We encourage you to participate in this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–19421], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Regulatory History: This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published the 60-day notice required by OIRA (69 FR 62449, October 26, 2004). That notice elicited no comments.

Request for Comments: The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Reports (ICR) addressed. Comments to DMS must contain the docket number of this request, [USCG 2004–19421]. Comments to OIRA are best assured of having their full effect if OIRA receives them on or before the 30th day after the publication of this request.

Information Collection Requests

1. *Title:* Unauthorized entry into Cuban territorial waters (Formerly, ''Unauthorized departure of U.S. vessels and entry into Cuban territorial waters'').

OMB Control Number: 1625–0106.

Type of Request: Extension of currently approved collection.

Affected Public: Certain individuals.

Form: None.

Abstract: The President by proclamation and the Secretary of Homeland Security by order have directed and authorized the U.S. Coast Guard to regulate the anchorage and movement of certain U.S. vessels, and vessels without nationality, located within the territorial waters of the United States, that thereafter enter Cuban territorial waters. The Coast Guard has issued a final rule (69 FR 41367, July 8, 2004) that requires all such U.S. registered vessels, and vessels without nationality, less than 100 meters in length, to apply for and receive a permit to enter Cuban territorial waters. This requirement is necessary to preclude such vessels from departing U.S. waters and thereafter entering Cuban waters, unless such vessels hold licenses from other government agencies that allow them to engage in exports to, and transactions with Cuba. The information is collected to regulate departure of U.S. vessels from U.S. territorial waters and entry thereafter into Cuban territorial waters. The need to regulate this vessel traffic supports ongoing efforts to enforce the Cuban embargo, which is designed to bring about an end to the current government and a peaceful transition to democracy. Accordingly, only applicants that demonstrate prior U.S. government approval for exports to and transactions with Cuba may be issued a Coast Guard permit.

Burden Estimates: The estimated burden is 43.0 hours a year.

Dated: December 15, 2004.

Ronald T. Hewitt,

Assistant Commandant for C4 and Information Technology.

[FR Doc. 04–27898 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Registered Traveler (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: The U.S. Department of Homeland Security, Transportation Security Administration, has submitted a request for the renewal of an existing information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 21, 2004 (69 FR 56451).

DATES: Send your comments by January 20, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Lisa S. Dean, Privacy Officer, Office of Transportation Security Policy, TSA–9, 601 South 12th Street, Arlington, Virginia 22202–4220; telephone (571) 227–3947; facsimile (571) 227–2555.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Registered Traveler (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments.

Type of Request: Renewal of an existing collection.

OMB Control Number: 1652–0019.

Form(s): Electronic enrollment application; satisfaction survey.

Affected Public: Applicants to the RT Pilot Program and lead stakeholders.

Abstract: TSA is continuing an ongoing pilot at a limited number of airports to test and evaluate specific technologies and business processes related to the Registered Traveler (RT) concept. This pilot program is designed to positively identify qualified, known travelers via advanced identification technologies for the purposes of expediting those passengers' travel experience at the airport security checkpoints and thereby enabling TSA to improve the allocation of its limited security resources. In addition, TSA may expand the current pilot to additional locations and may also test the concept of a public/private partnership.

TSA will collect and retain a minimal amount of personal information from individuals who volunteer to participate in the program. This information may be used by TSA to verify an applicant's claimed identity, complete a name-based security threat assessment, and issue an identification token prior to enrollment in the program. In addition, TSA will administer two instruments to measure satisfaction of RT pilot participants and key stakeholders to collect data on the effectiveness of the pilot technologies and business processes. The first instrument will be a survey of a representative percentage

of the RT pilot participants. The second instrument will be an interview conducted with the key stakeholders at sites participating in the RT pilot. All surveys and interviews will be voluntary and anonymous.

Number of Respondents: 175,000.

Estimated Annual Burden Hours: 38,384.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on December 15, 2004.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 04–27903 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 27, 2004.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by January 5, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Gunnison County

Vienna Bakery—Johnson Restaurant, 122–124 N. Main St., Gunnison, 04001425

KANSAS

Cowley County

Pettit Cleaners Building, 114 E. 8th Ave., Winfield, 04001427

Dickinson County

Staatz House, 1824 Wolf Rd., Junction City, 04001426

Rawlins County

Minor Sod House, SW¼, SW¼, NW¼, SW¼, S.20, T.5S, R. 36W, McDonald, 04001428

MASSACHUSETTS

Middlesex County

Boutwell, Gov. George S., House, 172 Main St., Groton, 04001431

Fresh Pond Parkway—Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Fresh Pond Parkway, Cambridge, 04001429

Westlawn Cemetery, Concord Rd., Westford, 04001433

Suffolk County

Truman Parkway—Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Truman Parkway, Boston, 04001430

VFW Parkway, Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), VFW Parkway, bet. Spring and Centre Sts., Boston, 04001432

MONTANA

Fallon County

Baker Hotel, 4 South Main St., Baker, 04001435

Richland County

Burgess Garage, Corner of 3rd and Main, Lambert, 04001434

NEW JERSEY

Camden County

Central Trust Building (Banks, Insurance, and Legal Buildings in Camden, New Jersey, 1873–1938 MPS), 401 Federal St., Camden, 04001460

South Jersey Gas, Electric and Traction Company Office Building, 418 Federal St., Camden, 04001436

NEW YORK

Albany County

St. Andrew's Episcopal Church, 10 N. Main Ave., Albany, 04001447

Cayuga County

Durkee, Almeron, House, 13 Cayuga St., Union Springs, 04001455

Howland, Charles— William H. Chase House, 188 Cayuga St., Union Springs, 04001456

Clinton County

Rouses Point Railroad Station, 68 Pratt St., Rouses Point, 04001454

Essex County

First Congregational Church and Cemetery, NY 9 at Elizabeth-Lewis Rd., Lewis, 04001457

Hamilton County

St. William's Catholic Church, Long Point on Raquette Lake, Long Lake, 04001446

Livingston County

First Presbyterian Church of Avon, 5605 Avon-Lima Rd., Avon, 04001444

Monroe County

Saint Mark's and Saint John's Episcopal Church, 1245 Culver Rd., Rochester, 04001438

Union Presbyterian Church, Church St., Scottsville, 04001439

Montgomery County

Trinity Lutheran Church and Cemetery, 5430 NY 10, Stane Arabia, 04001440

New York County

LILAC, United States Lighthouse Tender, Pier 40, New York, 04001441

Niagara County

Jefferson Apartment Building, 250 Rainbow Blvd., Niagara Falls, 04001452

Ontario County

Dundee Methodist Church, 33 Water St., Dundee, 04001445

Orange County

Taylor—Corwin House, 112 Maple Ave., Pine Bush, 04001442

Thompson, Andrew, Farmstead, RD Rte 302, Pine Bush, 04001443

Oswego County

Carley's Mills Schoolhouse, Oswego Cty Rte 84, Hastings, 04001449

Suffolk County

Strong, Thomas, House, 100 Wainscott Hollow Rd., Wainscott, 04001451

Town Doctors' House Site, 310 Ackerly Pond Ln., Southold, 04001448

Sullivan County

Ferndale School, Uppper Ferndale Rd. and Ferndale Loomis Rd., Ferndale, 04001437

Tompkins County

District No. 2 School, Caroline and Dryden, 2670 Slaterville Rd., Slaterville Springs, 04001453

Ulster County

Chapel Hill Bible Church, 49 Bingham Rd., Marlboro, 04001450

PENNSYLVANIA

Tioga County

Wellsboro Historic District, Roughly bounded by Nichols, Tioga, Charleston, Jackson, East, Bacon, Morris, Sturrock, Meade,

Grant, Walnut, Academy, etc., Wellsboro, 04001458

TENNESSEE

Anderson County

Fraterville Miners' Circle, Leach Cemetery Ln., Lake City, 04001459

A request for removal has been made for the following resource:

MINNESOTA

Washington County

Territorial—State Prison (Washington County MRA), Main and Laurel Sts., Stillwater, 82003079

[FR Doc. 04–27884 Filed 12–20–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 4, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 5, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Montrose County

Silesca Ranger Station, Grand Mesa, Uncompahgre and Gunnison National Forest, Grand Mesa, 04001464

CONNECTICUT

Hartford County

Hilltop Farm, 1550–1760 Mapleton Ave., Suffield, 04001463

Phoenix Life Insurance Company Building, One American Row, Hartford, 04001462

New London County

Palmer, John, House, 291 N. Burnham Hwy., Lisbon, 04001461

GEORGIA

Floyd County

Sardis Presbyterian Church and Cemetery, 7104 GA 20 NW., Coosa, 04001468

Glynn County

King and Prince Hotel, 201 Arnold Rd., St. Simons Island, 04001465

Taylor County

Butler Downtown Historic District, (Georgia County Courthouses TR (AD)), Downtown Butler centered on the courthouse square and includes resources on Main St., Broad St. and Ivey St., Butler, 04001466

Walker County

Marsh—Warthen House, N. Main St., Lafayette, 04001467

LOUISIANA

Evangeline Parish

Bank of Ville Platte, 102 W. Main St., Ville Platte, 04001469

St. John The Baptist Parish

Hope Plantation House, 109 S. Church St., Garyville, 04001470

MARYLAND

Baltimore Independent city

Friends Burial Ground, 2506 Harford Rd., Baltimore (Independent City), 04001471

Massachusetts

Essex County

Portland (Shipwreck and Remains), Address Restricted, Gloucester, 04001473

Middlesex County

Fairview Cemetery, Main St., Westford, 04001472

MISSOURI

Lewis County

Lewis County Courthouse, 100 E. Lafayette St., Monticello, 04001476

St. Louis Independent City

Board of Education Building, 901–911 Locust St. and 401–409 N. Ninth St., St. Louis (Independent City), 04001475

Municipal Service Building, Bounded by Clark, Spruce, 11th and Tucker, St. Louis (Independent City), 04001474

NEW JERSEY

Hunterdon County

District No. 98 Schoolhouse, 19 S. Main St., Stockton Borough, 04001477

NEW MEXICO

Los Alamos County

Lujan Road, (Homestead and Ranch School Era Roads and Trails of Los Alamos, New Mexico MPS) NE of jct. of Diamond Dr. and San Ildefonso Rd., Los Alamos, 04001478

Roosevelt County

Midway Service Station, 38797 U.S. 70, Kenna, 04001479

NEW YORK

Rockland County

Stevens, H.R., House, 234 Congers Rd., New City, 04001480

Ulster County

Hunt, George and John R., Memorial Building, 2 Liberty St., Corner of Liberty and Canal Sts., Village of Ellenville, 04001481

PENNSYLVANIA

Bedford County

Chesnut Ridge and Schellsburg Union Church and Cemetery, US 30, Napier Township, 04001482

WISCONSIN

Brown County

Grassy Island Range Lights, 100 Bay Beach Rd., Green Bay, 04001484

Douglas County

Roosevelt Terrace, 1700–1714 N. 21st St. and 2105–2109 Ogden Ave., Superior, 04001483

Forest County

Dinesen—Motzfeldt—Hettinger Log House, 3125 WI 55, Crandon, 04001486

Marinette County

Milwaukee Road Depot, 650 Hattie St., Marinette, 04001485

Vilas County

Big Sand Lake Club, 4571 Big Sand Lake Club Rd., Phelps, 04001487

[FR Doc. 04–27886 Filed 12–20–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR parts 750 and 877 which relate to surface coal mining and reclamation operations on Indian Lands; and use of police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner refuses consent or is not available, respectively.

DATES: Comments on the proposed information collection must be received by February 22, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room

210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in: (1) 30 CFR part 750, Requirements for surface coal mining and reclamation operations on Indian Lands; and (2) 30 CFR part 877, Rights of entry. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Requirements for surface coal mining and reclamation operations on Indian Lands—30 CFR Part 750.

OMB Control Number: 1029–0091.

Summary: Operators who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to Section 710 of SMCRA.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coal mining permits.

Total Annual Responses: 76.

Total Annual Burden Hours: 1,400.

Title: Rights of Entry—30 CFR Part 877.

OMB Control Number: 1029–0055.

Summary: This regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 103.

Total Annual Burden Hours: 103.

Dated: December 16, 2004.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 04–27895 Filed 12–20–04; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Association of Blood Banks

Notice is hereby given that, on September 15, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Association of Blood Banks (''AABB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Association of Blood Banks, Bethesda, MD. The nature and scope of AABB's standards development activities are: The development of standards for voluntary compliance, and accreditation against those standards, in the areas of whole blood and blood component collection, processing and transfusion; the collection, processing and transplantation of marrow, peripheral blood and umbilical cord blood progenitor cells; tissue transplantation, and parentage testing.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27871 Filed 12–20–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electrotechnical Commission Technical Committee 37

Notice is hereby given that, on September 17, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Electrotechnical Commission Technical Committee 37 (''IET TC 37''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Electrotechnical Commission Technical Committee 37, Rosslyn, VA. The nature and scope of IEC TC 37's standards development activities are: to develop and maintain standards related to surge arresters. IEC TC 37 currently maintains a series of IEC 60099 standards dealing with general requirements for surge arresters. The standards developed by IEC TC 37 are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27872 Filed 12–20–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electronic Distributors Association

Notice is hereby given that, on October 8, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Electronic Distributors Association (''NEDA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Electronic Distributors Association, Alpharetta, GA. The nature and scope of NEDA's standards development activities are: establishing and publishing voluntary standards related to packaging, handling, labeling, shipping and tracking products and operational agreements between business partners in the electronic component supply chain.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–27873 Filed 12–20–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: ARCOS transaction reporting—DEA Form 333.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 22, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ARCOS Transaction Reporting—DEA Form 333.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 333. Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: Manufacturers and distributors of controlled substances must report acquisition/distribution transactions to DEA to comply with Federal law and international treaty obligations. This information helps to ensure a closed system of distribution for these controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 1,334 persons respond to this collection. DEA estimates that it takes 1 hour to complete a paper form and 10 minutes to complete the form electronically.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates this collection has a public burden of 1,309 hours annually.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 15, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–27839 Filed 12–20–04; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–149]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

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 announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, January 27, 2005, 1 p.m. to 3 p.m. eastern time.

ADDRESS: Florida Space Authority, Auditorium, 100 Spaceport Way, Cape Canaveral, Florida 32920, (321) 730–5301.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Erminger, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0914.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Quarterly Meeting. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities,

systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be: Space Shuttle Program, International Space Station Program, and Cross-Program Areas. The Aerospace Safety Advisory Panel is composed of nine members and one ex-officio member.

The meeting will be open to the public up to the seating capacity of the room (50). Seating will be on a first-come basis. Please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance to reserve a seat. Visitors will be requested to sign a visitor's register. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance.

Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–27891 Filed 12–20–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice 04–148]

NASA Robotic and Human Exploration of Mars Strategic Roadmapping 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 announces a meeting of the NASA Robotic and Human Exploration of Mars Strategic Roadmapping Committee.

DATES: Tuesday, January 4, 2005, 8 a.m. to 5 p.m., Wednesday, January 5, 2005, 8 a.m. to 5 p.m., Thursday, January 6, 2005, 8 a.m. to 5 p.m., Pacific standard time.

ADDRESSES: Spitzer Science Center/Keith Spalding, Room 410, 200 East California Boulevard, Pasadena, CA 91125.

FOR FURTHER INFORMATION CONTACT: Ms. Tracey Abbott at (818) 393–7106.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

—Mars science: What we know today.
—Science planning for exploring Mars.
—Overview of robotic science missions.
—Challenges of Mars robotic and human exploration.
—Human mission studies, options, and technology needs.
—Key issues to be studied.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–27890 Filed 12–20–04; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 7, 2005.
Time: 8:30 a.m. to 5:30 p.m.
Room: 714.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2004 deadline.

2. *Date:* January 14, 2005.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2004 deadline.

3. *Date:* January 24, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions (British and American Literature) submitted to the Division of Research Programs at the November 1, 2004 deadline.

4. *Date:* January 25, 2005.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2004 deadline.

5. *Date:* January 27, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Scholarly Editions (Religion, Philosophy, Science, and the Arts) submitted to the Division of Research Programs at the November 1, 2004 deadline.

6. *Date:* January 28, 2005.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2004 deadline.

7. *Date:* January 28, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research

(The Americas), submitted to the Division of Research Programs at the November 1, 2004 deadline.

8. *Date:* January 31, 2005.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Collaborative Research (Archaeology), submitted to the Division of Research Programs at the November 1, 2004 deadline.

Daniel Schneider,

Advisory Committee, Management Officer.

[FR Doc. 04–27882 Filed 12–20–04; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 AND 50–323]

Pacific Gas and Electric Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82 issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant (DCPP), Unit Nos. 1 and 2 located in San Luis Obispo County, California.

The proposed amendments would revise Technical Specification (TS) 3.7.17 and TS 4.3 for Cycles 14–16 to allow installation and use of a temporary cask pit spent fuel storage rack (cask pit rack) for DCPP Unit Nos. 1 and 2. The total spent fuel pool (SFP) storage capacity for each unit would be increased to 1478 fuel assemblies for Cycles 14–16.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to temporarily increase the spent fuel storage capacity with a cask pit rack were evaluated for impact on the following previously evaluated events:

1. A fuel handling accident (FHA).
2. A heavy load drop into the cask pit.
3. A loss of spent fuel pool (SFP) cooling.
4. A stored fuel criticality event.
5. A seismic event.

The probability of a FHA is not significantly increased by the proposed changes, because the same equipment (*e.g.*, the spent fuel handling crane) and procedures will be used to handle fuel assemblies and the frequency of fuel movement will be essentially the same, with or without a cask pit rack. The FHA radiological consequences are not significantly increased because the source term of a single fuel assembly will remain unchanged, and the cask pit rack will be installed at the same water depth as the existing SFP racks, with the same iodine decontamination factors assumed in the FHA analysis. The structural consequences of dropping a fuel assembly on a cask pit rack were evaluated and found to be acceptable.

In accordance with NUREG–0612 [''Control of Heavy Loads at Nuclear Power Plants''], heavy load drops are not required to be postulated if a single failure-proof crane is used for heavy load movements. If drops are postulated, then the consequences must be acceptable. PG&E plans to install a single failure-proof crane in accordance with NUREG–0612, prior to heavy load movements associated with the cask pit rack and platform. In the event that a single failure-proof crane is not available, PG&E has also performed heavy load drop analyses for the cask pit rack and platform, which have shown acceptable results in accordance with NUREG–0612. Therefore, the probability and the consequences of a heavy load drop in the cask pit are not significantly increased.

The probability of a loss of SFP cooling is unaffected and its consequences are not significantly increased with the cask pit rack installed. With the cask pit rack installed, loss of forced cooling results in a sufficient time-to-boil for the operator to recognize the condition and establish SFP makeup to compensate for water lost due to pool bulk boiling, and thereby maintain a sufficient water blanket over the stored spent fuel.

The probability and consequences of a stored fuel criticality event are not increased by the addition of a cask pit rack. The reactivity analysis for the new cask pit rack demonstrates that reactivity remains subcritical (below 0.95) for the worst-case fuel-mispositioning event with credit for soluble boron.

The probability of a seismic event is unaffected and its consequences are not increased with the cask pit rack installed, because the structural analysis of the cask pit rack demonstrates that the fuel storage function of the rack is maintained during a seismic event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to add a cask pit rack does not alter the operating requirements of the plant or the equipment credited in the mitigation of design basis accidents, nor do the proposed changes affect any of the important parameters required to ensure the safe storage of spent fuel. A new rack material (Metamic™) is introduced into the pool under these changes; but, based on testing results, there are no mechanisms that create a new or different kind of accident. The NRC has also approved the use of Metamic™ generically for SFPs. The same equipment (*e.g.*, the spent fuel handling crane) and procedures will be used to handle fuel assemblies for the new cask pit rack as are used for existing spent fuel storage. The fuel storage configuration in the cask pit rack will be similar to the configuration in the existing SFP storage racks, and a fuel drop or mispositioning event in the new racks does not represent a new or different kind of accident from fuel handling and mispositioning events previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The effect of the proposed change on current margins of safety was evaluated for spent fuel storage functionality and criticality, spent fuel and SFP cooling, and SFP/cask pit structural integrity. The design of the new cask pit rack uses proven technology which preserves the proper safety margins for spent fuel storage to provide a coolable and subcritical geometry under both normal and abnormal/accident conditions. The rack design complies with 10 CFR 50 Appendix A General Design Criterion (GDC) 62, the O.T. Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Regulatory Guide 1.13, and ANSI/American Nuclear Society (ANS) 52.2. Handling of the cask pit rack and its platform in accordance with the defense-in-depth approach of NUREG–0612 with temporary lift devices designed to ANSI N14.6 preserves the proper margin of safety to preclude a heavy load drop in the cask pit.

The proposed SFP cooling system design basis is consistent with the previous licensing basis in FSAR [Final Safety Analysis Report], Section 9.1, for SFP temperature limits during normal and abnormal core offload conditions. The rack and SFP thermal-hydraulic analyses demonstrate that the proposed SFP cooling system design basis is met, and that no bulk boiling will occur in the cask pit rack or SFP with minimum cooling available. In the event

of a loss of SFP cooling, there will be sufficient time for operators to identify the condition and initiate makeup flow or restore cooling to preserve fuel-cooling capability.

The criticality analysis demonstrates that the effective neutron multiplication factor (k_{eff}) is less than 1.0 for normal conditions with unborated water and less than 0.95 with 500 ppm of soluble boron, at a 95 percent probability with a 95 percent confidence level. Further, the reactivity effects of abnormal and accident conditions have been evaluated. To assure that under credible abnormal and accident conditions the reactivity will not exceed 0.95 at a 95 percent probability with a 95 percent confidence level, a soluble boron level of 800 ppm will be required to be maintained.

The structural analyses for the cask pit rack and platform and adjacent structures show acceptable results during seismic motion.

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.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 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 by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, the attorney for the licensee.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors.'' Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart L apply.

For further details with respect to this action, see the application for amendments dated November 3, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of December 2004.

For the Nuclear Regulatory Commission.

Girija Shukla,

Project Manager, Section Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–27846 Filed 12–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments for Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, located in Berrien County, Michigan. Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Sections 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be a full conversion from the current technical specifications (CTS) to a set of improved technical specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 2, dated June 2001. The proposed action is in accordance with the licensee's application dated April 6, 2004, and the information provided to the NRC staff through the joint NRC-Indiana Michigan Power Company CNP ITS Conversion Web page. To expedite its review of the application, the NRC staff issued its requests for additional information (RAIs) through the CNP ITS Conversion Web page and the licensee addressed the RAIs by providing responses on the Web page. Entry into the database is protected so that only the licensee and NRC reviewers can enter information into the database to add RAIs (NRC) or providing responses to the RAIs (licensee); however, the public can enter the database to read the questions asked and the responses provided. Pursuant to 10 CFR 50.4 regarding written communications for license amendment requests, and in order to have the database on the CNP, Units 1 and 2, dockets before the amendments would be issued, the licensee will submit a copy of the

database to the NRC after there are no further RAIs. The public can access the database through the NRC Web site at *http://www.nrc.gov* by the following process: (1) Click on the tab labeled ''Nuclear Reactors'' on the NRC home page along the upper part of the web page, (2) then click on the link to ''Operating Reactors'' which is under ''Regulated Activities'' on the left hand side of the web page, (3) then click on the link to ''Standard Technical Specifications'' which is on right hand side of the page, and (4) finally click on the link to ''Comments on the application and responses by D. C. Cook,'' near the bottom of the web page, to open the database. The RAIs and responses to RAIs are organized by ITS Sections 1.0, 2.0, 3.0, 3.1 through 3.9, 4.0, and 5.0, which are listed first, and the beyond scope issues (BSIs) 1 through 35, which are listed later. For every listed ITS section or BSI, there is an RAI which can be read by clicking on the ITS section or BSI number. The licensee's responses are shown by a solid triangle adjacent to the ITS section or BSI number. To read the response, click on the triangle. To page down through the ITS sections to the BSIs, click on ''next'' along the top of the page or on ''previous'' to return to the previous page.

The Need for the Proposed Action

The Commission's ''Proposed Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (52 FR 3788), dated February 6, 1987, contained an Interim Policy Statement that set forth objective criteria for determining which regulatory requirements and operating restrictions should be included in the technical specifications (TS). When it issued the Interim Policy Statement, the Commission also requested comments on it. Subsequently, to implement the Interim Policy Statement, each reactor vendor owners group and the NRC staff began developing standard TS (STS) for reactors supplied by each vendor. The Commission then published its ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132), dated July 22, 1993, in which it addressed comments received on the Interim Policy Statement, and incorporated experience in developing the STS. The Final Policy Statement formed the basis for a revision to 10 CFR 50.36 (60 FR 36953), dated July 19, 1995, that codified the criteria for determining the content of TS. The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For CNP, Units 1 and 2, NUREG–1431 documents the STS and forms the basis for the CNP, Units 1 and 2, conversion to the ITS.

The proposed changes to the CTS are based on NUREG–1431 and the guidance provided in the Final Policy Statement. The objective of this action is to rewrite, reformat, and streamline the CTS (*i.e.*, to convert the CTS to the ITS). Emphasis was placed on human factors principles to improve clarity and understanding. The ITS Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the CNP, Units 1 and 2, ITS. The NRC staff discussed plant-specific issues (*i.e.*, unique design features, requirements, and operating practices) with the licensee.

Relocated specifications include those changes to the CTS that relocate certain requirements which do not meet the 10 CFR 50.36 selection criteria. These requirements may be relocated to the Bases section, updated safety analysis report, core operating limits report, operational quality assurance plan, plant procedures, or other licensee-controlled documents. Relocating requirements to licensee-controlled documents does not eliminate them, but rather, places them under more appropriate regulatory controls (*i.e.*, 10 CFR 50.54(a)(3), and 10 CFR 50.59) to manage their implementation and future changes.

The proposed action is necessary to allow the licensee to implement the ITS. The ITS are based on standard Westinghouse Technical Specifications and have been implemented by several utilities. They are considered an improvement over the CTS.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. Specifically, the proposed TS changes will not increase the probability or consequences of accidents. No changes are being made in the types or amounts of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed TS changes. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action and, thus, the proposed action will not have any significant impact to the human environment.

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 for the CNP, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

On November 19, 2004, the staff consulted with Mr. Ken Yale of the Michigan Department of Environmental Quality regarding the environmental impact of the proposed action. The State official agreed with the conclusions of the NRC.

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 April 6, 2004, and the information provided to the NRC staff through the joint NRC-Indiana Michigan Power Company CNP ITS Conversion web page. 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/''adams.html''.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) 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 14th day of December 2004.

For the Nuclear Regulatory Commission.

Margie Kotzalas,

Acting Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–27845 Filed 12–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Extension of Public Comment Period: Louisiana Energy Services National Enrichment Facility

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Extension of public comment period.

SUMMARY: The NRC is extending further the public comment period for the Draft Environmental Impact Statement (DEIS) for the Proposed National Enrichment Facility (NEF) in Lea County, New Mexico (NUREG–1790). The notice of availability of the DEIS appeared in the **Federal Register** on September 17, 2004 (69 FR 56104), with the public comment period to end on November 6, 2004. On November 9, 2004, the NRC extended the public comment period until December 18, 2004 (69 FR 64983).

On October 25, 2004, the NRC suspended public access to its Agencywide Documents Access and Management System (ADAMS) database accessible through the NRC's Web site and initiated an additional security review of publicly-available documents to ensure that potentially sensitive information is removed. This security review is ongoing and the exact date of its completion is not certain.

However, from October 25, 2004, until December 6, 2004, members of the public continued to have access to the DEIS through NRC's project-specific Web site (*http://www.nrc.gov/materials/fuel-cycle-fac/lesfacility.html*). Members of the public also had access to the Environmental Report (ER) submitted by Louisiana Energy Services (LES) for the NEF through the same Web site until November 28, 2004. The links to the DEIS and the ER were suspended on December 7, 2004, and on November 29, 2004, respectively, while the NRC staff conducted its security review of these documents.

By this notice, the public comment period on the DEIS is being extended further until January 7, 2005. This extension of the public comment period will allow members of the public an additional opportunity to obtain relevant documents in order to comment on the DEIS. The NRC staff will make available on its project-specific Web site redacted copies of the DEIS, the ER, and LES's responses to NRC staff requests for additional information related to the ER. Redacted versions of these documents are expected to be accessible beginning on December 23, 2004. Interested members of the public may obtain copies of additional publicly-available documents for review and/or copying by contacting the NRC Public Document Room. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800–397–4209 or 301–415–4737 or *pdr@nrc.gov.*

Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–3103 when submitting comments. Written comments submitted by mail should be postmarked by January 7, 2005, to ensure consideration. Comments mailed after that date will be considered to the extent practical. Comments will also be accepted by e-mail to *nrcrep@nrc.gov,* or by facsimile to 301–415–5397, Attention: Anna Bradford.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the National Enrichment Facility, please contact Timothy Johnson at (301) 415–7299. For general information on the NRC environmental review process, please contact either Anna Bradford at (301) 415–5228 or James Park at (301) 415–5835.

Dated at Rockville, MD, this 15th day of December 2004.

For the Nuclear Regulatory Commission.

B. Jennifer Davis,

Chief, Environmental and Low-Level Waste Section, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–27847 Filed 12–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on January 26, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Wednesday, January 26, 2005—8:30 a.m. until the conclusion of business.

The Subcommittee will review the application for an 8.5% power uprate for the Waterford Nuclear Power Station. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy Nuclear South regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 15, 2004.

John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 04–27844 Filed 12–20–04; 8:45 am]

BILLING CODE 7590–01–P

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 November 25, 2004, through December 9, 2004. The last biweekly notice was published on December 7, 2004 (69 FR 70712).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the

applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the 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.*

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 10, 2004.

Description of amendment request: The amendments would revise Technical Specification (TS) 3.6.3, ''Containment Isolation Valves,'' to allow the surveillance frequencies for leakage rate testing to be specified in the Catawba Nuclear Station Containment Leak Rate Testing Program.

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:

First Standard

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

This amendment will not change any previously evaluated accidents such as the postulated ''Fuel Handling Accident (FHA) in Containment''. No credit is assumed for VP containment isolation in the FHA within containment. The Containment Purge (VP) System and Hydrogen Purge (VY) System containment isolation valves are sealed closed during modes 1 through 4. The Containment Air Release and Addition (VQ) System containment isolation valves are designed to close within 5 seconds of a containment phase ''A'' isolation signal. The prevention and mitigation of these accidents is not affected by this change.

Test data demonstrates that the likelihood of a malfunction of a resilient seal in one of the VP, VY, or VQ valves is not increased by this change in the surveillances. The systems will continue to be able to perform their design functions of isolating containment during the evaluated accidents. Test procedures will continue to monitor the leakage of these valves to ensure the design function will continue to be met. There is no impact on previously evaluated accidents since the valves will continue to close and seal or remain closed as originally assumed in the accident scenarios.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

This change does not involve a physical alteration to the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing any normal plant operation. The change does not alter assumptions made in the safety analyses or licensing basis. This change will not affect or degrade the ability of the Containment Purge System, Hydrogen Purge System, or Containment Air Release and Addition System valves to perform their specified safety functions. Therefore, the change does not create the possibility of a new or different kind of credible accident from any accident previously evaluated.

Third Standard

Does the proposed change involve a significant reduction in a margin of safety?

No.

SR 3.6.3.6 currently states: ''The measured leakage rate for Containment Purge System and Hydrogen Purge System valves must be $< 0.05\ L_a$ (Design Leakage Rate) when pressurized to Pa (Design Containment Pressure). The measured leakage rate for Containment Air Release and Addition valves must be $< 0.01\ L_a$ when pressurized to P_a. These required maximum leak rates will not be changed by this amendment. Testing of these valves to measure leakage through the valve seats will continue, only at a different frequency based on past test results. This will be a nominal frequency of 18 months for the VP System and in accordance with 10 CFR 50, Appendix J, Option B for the VQ and VY Systems. Therefore, the proposed changes listed above 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: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 19, 2004.

Description of amendment request: The amendments would revise Technical Specification (TS) 3.8.4, ''DC Sources—Operating'' and TS 3.8.6, ''Battery Cell Parameters'' to allow for the replacement of the existing nickel cadmium diesel generator batteries with conventional lead acid batteries.

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) The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The DG batteries are not accident initiating equipment; they are accident mitigating equipment. As such, they cannot affect the probability of any accident being initiated. The performance of the replacement batteries will exceed that of the existing batteries. Therefore, no accident consequences will be adversely impacted.

(2) The proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The DG batteries are not capable by themselves of initiating any accident. Other than the replacement of the batteries themselves and the associated modification work (*e.g.*, installation of the battery HVAC system), no physical changes to the overall plant are being proposed. No changes to the overall manner in which the plant is operated are being proposed. Therefore, no potential for new accident types is generated.

(3) The proposed license amendments do not involve a significant reduction in a margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their intended functions. These barriers include the fuel cladding, the reactor coolant system, and the containment. The modification to replace the DG batteries will not have any impact on these barriers. In addition, no accident mitigating equipment will be adversely impacted as a result of the battery replacement. The replacement batteries will have overall performance capabilities equal to or greater than those for the existing batteries. Therefore, existing safety margins will be preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: September 21, 2004.

Description of amendments request: The proposed amendment would delete the requirements from the technical specifications (TS) to maintain hydrogen recombiners and hydrogen and oxygen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Combustible gas control for nuclear power reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration 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 no significant hazards consideration determination in its application dated September 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:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97, Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2 and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOPs), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a

significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI Unit 2, accident can be adequately met without reliance on safety-related hydrogen monitors. Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI Unit 2, accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: April 14, 2004.

Description of amendment request: The proposed amendment would add a new section to the Technical Specifications (TSs) and two new Limiting Conditions for Operations (LCOs) to allow certain reactor coolant system (RCS) hydrostatic and system leakage pressure tests to be performed with the reactor pressure vessel temperature above 212° Fahrenheit (F). The first LCO would allow specified TS requirements to be changed to permit performance of special tests and operations, which otherwise could not be performed if required to comply with the requirements of the TSs. The second LCO would require reactor low water level instrumentation, standby gas treatment system, and secondary containment to be OPERABLE to allow certain RCS pressure tests to be performed with the reactor pressure vessel temperature above 212° F, and provides for an exemption from the requirements for OPERABILITY for other systems that currently go into effect when in Hot Shutdown or when RCS temperature is greater than 212° F. It will also update the Table of Contents to reflect the proposed changes.

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. The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of an accident previously evaluated is not significantly increased because the proposed change will not alter the method by which RCS hydrostatic pressure and leak testing is performed. Under this proposed change the secondary containment, standby gas treatment system and associated initiation instrumentation are required to be operable during the performance of RCS hydrostatic pressure and leak testing and would be capable of handling any airborne radioactivity or steam leaks that could occur. The required pressure testing conditions provide adequate assurance that the consequences of a steam leak will be conservatively bounded by the consequences of a main steamline break (MSLB) outside the primary containment. Accordingly, the consequences of previously evaluated accidents are not increased significantly.

The proposed update to the Table of Contents is editorial in nature. Since this update is administrative in nature, it cannot increase the probability or consequences of a previously analyzed accident.

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 previously evaluated?

The proposed amendment change will not alter the way that hydrostatic pressure and leak testing is performed. Therefore, the proposed change will 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?

The proposed amendment will not involve a significant reduction in a margin of safety for a postulated MSLB outside of primary containment. The proposed changes and additions result in increased system operability requirements above those that currently exist during the performance of RCS hydrostatic pressure and leak testing. The incremental increase in stored energy in the vessel during testing will be conservatively bounded by the consequences of the postulated MSLB outside of primary containment. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The proposed update to the Table of Contents is editorial in nature. Since this update is administrative in nature, the proposed change does not involve a significant reduction in a margin of safety

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: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: Darrell Roberts.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 2, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification 4.5.B.2.2 (TS) to change the surveillance requirement frequency for air testing the drywell and suppression pool (torus) spray headers and nozzles from ''once every 5 years'' to ''following maintenance that could result in nozzle blockage.''

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 drywell and torus headers and spray nozzles are not assumed to be initiators of any accidents previously evaluated. Maintenance practices and normal environmental conditions to which the system is subjected are adequate to ensure operability of the systems. Since the system will be able to perform its accident mitigation function, the consequences of accident previously evaluated are not increased. 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 revised surveillance does not introduce any new mode of plant operation, does not involve physical modification of the plant, or any new operating modes, and cannot introduce new accident initiators. 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.

Maintenance practices and normal environmental conditions to which the system is subjected are adequate to ensure operability of the systems. As the spray nozzles are expected to remain fully capable of performing their post-accident mitigation function, margin of safety is not reduced. 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: Darrell J. Roberts.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 2, 2004.

Description of amendment request: The proposed amendment would remove a license condition that currently requires the reactor not to be operated for more than 24 hours if one recirculation loop is out of service. It would revise Technical Specifications (TSs) to allow the minimum critical power ratio (MCPR) safety limit to be changed for single loop operations (SLOs). It would also revise the current jet pump limiting condition for operation and surveillance requirements to allow for the conduct of a TS required surveillance during SLOs. The proposed amendment would modify the TSs to address SLO operating conditions and restrictions, and delete a TS condition related to thermal-hydraulic stability. It would update the TSs for average planar linear heat generation rate for SLOs, and update the thermal power applicability restrictions to be consistent with NUREG–1433, Revision 3, ''Standard Technical Specifications for General Electric Boiling-Water Reactors.'' It would also revise the TSs for linear heat generation rate and MCPR for thermal power applicability restrictions. The proposed amendment makes an administrative change to have MCPR recalculated when reactor power is equal to or greater than 25 percent. Lastly, it would update the TSs' table of contents and TS pages to administratively reflect all of these proposed changes.

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 license and technical specification changes will allow the plant to be operated with one recirculation pump for longer than 24 hours provided that appropriate limits are instituted. Extended single recirculation loop operation has been evaluated and methodologies have been established for determining appropriate operating limits. Implementation of the single recirculation loop operating limits ensures that system operation is in conformance with the conditions established to minimize the probability of accidents and the associated consequences. Required completion times for implementing the system operating limits and restoring out of specification limits minimize the probability that an accident occurs when out of specification conditions exist while allowing for deliberate operator action.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence 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 license and technical specification changes will allow plant operation with a single recirculation loop for longer than 24 hours. The proposed changes introduce an additional recirculation system-operating mode, however, existing system component operating equipment or operating characteristics will not change. The Pilgrim Station Single Loop Analysis Report identifies required operating limits that apply when the system will be operated in the single loop operation mode. Implementation of these operating limits will ensure that the system is operated in accordance with design. Additionally, revised jet pump surveillance ensures that loop specific surveillance is performed as required to validate the bounding assumptions of existing accident analyses. As such, no new failure mechanisms are created and existing design evaluations bound system operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. Does the proposed change involve a significant reduction in [a] margin of safety?

Response: No.

The proposed license and technical specification changes identify the operating limits that apply to single recirculation loop operation. These proposed recirculation system limits were identified to ensure that system operation would be in conformance to the conditions evaluated in applicable accident and transient analyses. Implementation of the proposed limits for single recirculation loop operation ensures that safety margins are maintained. Required completion times for implementing the system operating limits minimizes the

possibility that an accident occurs when out of specification conditions exist.

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: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: Darrell Roberts.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (licensee), Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 16, 2003 as supplemented by letter dated March 15, 2004.

Description of amendment request: The proposed amendment would relocate the current definition of surveillance frequency to new Technical Specification (TS) Sections 4.0.2 and 4.0.3, and revise the requirements for missed surveillance in Section 4.0.3. This change is consistent with NRC-approved Industry/Technical Specification Task Force (TSTF) change TSTF–358, Revision 5. The proposed change would allow 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, the proposed amendment would add the requirements for a Bases Control Program which is consistent with Section 5.5 of NUREG 1433. In addition, the current definition of surveillance interval (definition ''Z'') would be re-worded and relocated to new Section 4.0.1 consistent with Surveillance Requirement 3.0.1 of NUREG 1433. Appropriate Bases, also consistent with NUREG 1433 would be adopted for the new sections. An editorial change would be made to TS 6.7.C which references the current definition of surveillance frequency to now reference the new Section 4.0.2.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination in its application dated September 16, 2003. The model NSHC determination analysis for changes to the TS associated with missed surveillances, and the NSHC determination analysis provided by the licensee for the remaining TS changes, is provided herein.

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:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

With regard to the proposed change to the TS associated with missed surveillances, the proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

With regard to the remaining proposed changes to the TSs, the proposed changes do not involve physical changes to the plant or introduce any new modes of operation. Accordingly, continued assurance is provided that the process variables, structures, systems, and components are maintained such that there will be no degradation of any fission product barrier which could increase the radiological consequences of an accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

With regard to the proposed changes to the TSs associated with missed surveillances, the proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to the remaining proposed changes to the TSs, the proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

With regard to the proposed changes to the TSs associated with missed surveillances, the extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [limiting condition for operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, these changes do not involve a significant reduction in a margin of safety.

With regard to the remaining proposed changes to the TSs, the administrative changes do not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced. Accordingly, the

proposed changes do not involve a significant reduction in a margin of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and its endorsement of the model NSHC for missed surveillances 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: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: Allen G. Howe.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 5, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification Section 6.7.C ''Primary Containment Leak Rate Testing Program,'' to allow a one-time extension to the 10-year interval for performing the next Type A containment integrated leak rate test (ILRT). Specifically, the change would allow the test to be performed within 15 years from the last ILRT, which was performed in April 1995.

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. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of 10.6 years, based on past performance, is extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since the containment Type A testing extension is not a modification and the test extension is not of a type that could lead to equipment failure or accident initiation.

The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493 has found that, generically, very few potential containment leakage paths are not identified by Type B and C tests. The NUREG concluded that reducing the Type A (ILRT) testing frequency to once per twenty years was found to lead to an imperceptible increase in risk. These generic conclusions were confirmed by a plant specific risk analysis performed using the current Vermont Yankee Probabilistic Safety Assessment (PSA) internal events model that concluded the consequences are low to negligible.

Testing and inspection programs in place also provide a high degree of assurance that the containment will not degrade in a manner detectable only by Type A testing. The last two successful Type A tests indicate a very leak tight containment. Type B and C testing required by Technical Specifications will identify any containment opening such as valves that would otherwise be detected by the Type A tests. Inspections, including those required by the ASME [American Society of Mechanical Engineers] code and the Maintenance Rule are performed in order to identify indications of containment degradation that could affect that leak tightness.

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously analyzed.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing. The current test interval of 10.6 years, based on past performance, would be extended on a one time basis to fifteen years from the last Type A test. The proposed extension to Type A testing cannot create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing. The current test interval of 10.6 years, based on past performance, would be extended on a one time basis to fifteen years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have a minimal affect on this risk since 95% of the potential leakage paths are detected by Type C testing. This was further confirmed by a plant specific risk assessment using the current Vermont Yankee PSA internal events model that concluded the risk associated with this change is negligibly small and/or non-risk significant.

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: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: Allen G. Howe.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 6, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification Surveillance Requirement 4.5.B.1 related to air testing of the drywell spray headers and nozzles. Specifically, the amendment would change the test frequency from once every 5 years to following maintenance that could result in nozzle blockage.

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. The NRC staff has

reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's analysis 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 amendment would revise the Technical Specification surveillance requirements associated with the air test of the drywell spray headers and nozzles. The frequency of the air test would be changed from a fixed 5-year frequency to following maintenance that could result in nozzle blockage.

This surveillance test is performed while the plant is in a cold shutdown condition and the equipment is not required to be operable. The testing is to verify that the spray headers and nozzles are not obstructed. The proposed change in the surveillance test frequency will not result in any design changes to systems, structures, or components, or their method of operation. The drywell spray headers and nozzles are not initiators of any accidents previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability of any accident previously evaluated.

The drywell spray headers provide a means to control both temperature and pressure inside the primary containment, within design limits, under post-accident conditions. Due to the system design and operation considerations discussed in the licensee's application, the potential for corrosion product formation is minimized. In addition, the Vermont Yankee foreign material exclusion program has been judged to be sufficient to ensure that foreign material is not inadvertently introduced into the system. The proposed testing requirements are considered sufficient to provide a high degree of confidence that containment spray will function when required. Therefore, the proposed change does not involve a significant increase in the consequences of any 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 in the surveillance test frequency does not create the possibility of a new or different kind of accident, since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode, creating an accident or affecting the mitigation of an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the surveillance requirement to verify that the drywell spray headers and nozzles are unobstructed. Industry experience, Vermont Yankee surveillance history and the environmental conditions the system is subjected to are adequate to ensure continued system availability. As the spray nozzles are expected to remain unobstructed and be able to perform their post-accident function, plant safety is not affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: Allen G. Howe.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: July 9, 2004.

Description of amendment request: The Humboldt Bay Power Plant (HBPP), Unit 3, is a decommissioning nuclear power plant that was permanently shutdown in July 1976. In December of 2003, Pacific Gas and Electric (PG&E or the licensee) applied for a license to store its spent fuel in an onsite dry cask independent spent fuel storage installation (ISFSI). Moving the spent fuel to an ISFSI would permit the licensee to begin significant decommissioning activities. The licensee has chosen to use a Holtec HI–STAR HB spent fuel cask handling system involving a spent fuel multipurpose canister and overpack. To facilitate spent fuel transfer from the HBPP spent fuel pool to the ISFSI, the licensee will also need to install a new crane that can be used to lift the cask handling system loaded with spent fuel assemblies. The licensee states it will be able to satisfy the applicable guidance of NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' and NUREG–0554. ''Single-Failure Proof Cranes for Nuclear Power Plants,'' in performing the necessary movement of the HBPP spent fuel to dry cask storage. The licensee has requested a license amendment that approves the use of the crane and associated changes to the HBPP Defueled Safety Analysis Report (DSAR) along with analyses, design, and procedural changes required to implement transfer of the spent fuel from the spent fuel pool to the ISFSI.

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. With the HI–STAR HB System and the associated design and handling procedures, all cask drops and other events, which could damage other spent fuel, have been precluded through the robust handling systems, and mechanical arrangement that preclude crane movement over spent fuel, meeting the guidelines of NUREG–0612. Revisions of the HBPP procedures implementing the control of heavy loads ensures that PG&E will meet the NUREG–0612 guidelines and will protect the fuel storage locations and the new HI–STAR HB System loading/unloading activities. As a result of this design approach, a cask-handling accident that results in a significant offsite radiological release is not considered credible as demonstrated by the probabilistic evaluation that was performed using the guidelines of NUREG–0612 Appendix B and updated information from NUREG–1774 [''A Survey of Crane Operating Experience at U.S. Nuclear Power Plants from 1968 through 2002.'']

Other HBPP licensing-basis events, such as the drop of a spent fuel assembly, have not been affected by these changes and remain bounding events for potential radiological consequences.

The proposed design of the dry cask system, the handling system, and associated procedural controls provide assurance that: (1) operational errors and mishandling events, and (2) support system malfunctions will not result in an increase in the probability or consequence of an accident previously analyzed.

The proposed changes to use the Holtec HI–STAR HB system have been evaluated for seismic events and tornado missile impacts and it has been determined that these changes will not result in an increase in the probability or consequences of an accident previously evaluated. The Fire Protection Program will ensure that the combustible materials are properly controlled such that the total combustibles meet the current program commitments. Therefore, the proposed changes do not involve a

significant increase in the probability or consequences of an accident.

2. Does the proposed amendment create the possibility of a new or different type of accident from any accident previously evaluated?

No. The engineering design measures and the handling procedures preclude the possibility of new or different kinds of accidents. Damage to 10 CFR 50 structures, systems, and components from the cask handling and associated activities, and events resulting from possible damage to contained fuel have been considered. Both the types of accidents and the results remain within the envelope of existing HBPP DSAR licensing basis analyses, as demonstrated by the PG&E and Holtec analyses.

The rupture of multipurpose canister (MPC) dewatering, forced helium dehydration or related closure system lines or the malfunction of equipment during cask handling operations resulting in radiological consequences are bounded by the HBPP DSAR fuel-handling accident analysis.

Other design considerations, such as spent fuel pool (SFP) thermal, water chemistry and clarity, criticality, and structural, were evaluated and determined not to introduce the possibility of a new or different kind of accident from any previously evaluated.

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 amendment involve a significant reduction in a margin of safety?

No. With the Holtec HI–STAR HB System, and the associated design and handling procedures, cask drops and other events have been precluded through robust load handling systems, providing defense-in-depth as described in NUREG–0612. Cask tipovers, while not considered credible, are shown to be below the 60g limit, preventing damage to the contained fuel assemblies (and associated structures), and meeting the analysis guidelines of NUREG–0612. As the existing licensing basis assumes a nonmechanistic drop damaging the SFP and all fuel, the result of this design approach with the minimization of drops and the associated structural challenges assure the margin of safety has been maintained.

Other HBPP licensing-basis events, such as the drop of a spent fuel assembly, have not been affected by these changes and remain bounding events. Revision of HBPP procedures implementing the control of heavy loads to incorporate the additional restrictions on heavy loads movement will not affect the procedures or methodology used and will, therefore, not affect margins.

Adverse effects from seismic events and/or cask drops or tipovers have been evaluated, assuring that the fuel, MPC, and overpack remain within their design bases. Since design basis criteria are fully satisfied, there is no impact on the margin of safety.

The Fire Protection Program will continue to ensure that the combustible materials are properly controlled such that the total combustibles meet the current program commitments. Thus, there are no significant reductions in margin of safety associated with these changes.

Other design considerations, such as SFP thermal, water chemistry, criticality, and structural, were evaluated and determined to not involve a reduction in a margin of safety.

Based on the above evaluations, the licensee concludes that the activities associated with the above changes present no significant hazards consideration under the standards set forth in 10 CFR 50.92 and accordingly, a finding by the NRC of no significant hazards consideration is justified.

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: Richard F. Locke, Esquire, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Claudia Craig.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 6, 2004

Brief description of amendments: The proposed change will revise the Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' to allow surveillance testing of the onsite diesel generators (DGs) during power operation.

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. The licensee's analysis 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 design of plant equipment is not being modified by the proposed changes. In addition, the DGs and their associated emergency loads are accident mitigating features. As such, testing of the diesel generators (DGs) themselves is not associated with any potential accident-initiating mechanism. Therefore, there will be no significant impact on any accident probabilities by the approval of the requested changes.

The changes include an increase in the online time that a DG under test will be paralleled to the grid (for SRs [Surveillance Requirements] 3.8.1.10 and 3.8.1.14) or unavailable due to testing (per SR 3.8.1.13). However, the overall time that the DG is paralleled in all modes (outage/non-outage) should remain unchanged. As such, the ability of the tested DG to respond to a design basis accident [DBA] could be adversely impacted by the proposed changes. However, the impacts are not considered significant based, in part, on the ability of the remaining DG to mitigate a DBA or provide safe shutdown. With regard to SR 3.8.1.10 and SR 3.8.1.14, experience shows that testing per these SRs typically does not perturb the electrical distribution system and share the same electrical configuration alignment as the current monthly surveillance. In addition, operating experience and qualitative evaluation of the probability of the DG or bus loads being adversely affected concurrent with or due to a significant grid disturbance, while the DG is being tested, support the conclusion that the proposed changes do not involve any significant increase in the likelihood of a safety-related bus blackout or damage to plant loads.

The SR changes that are consistent with TSTF [Technical Specification Task Force]-283 have been approved generically and for individual Licensees. The on-line tests allowed by the TSTF are only to be performed for the purpose of establishing OPERABILITY. Performance of these SRs during restricted MODES will require an assessment to assure plant safety is maintained or enhanced.

Deletion of expired TS LCO [Limiting Condition for Operation] 3.8.1, Required Action A.3, one-time 21-day Completion Time allowance for Startup Transformer XST2 preventive maintenance is an administrative change only. 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 accident from any accident previously evaluated?

Response: No.

The proposed changes would not create any new accidents since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration as currently allowed for other DG SRs that allow testing during at-power operation. Deletion of expired TS LCO 3.8.1, Required Action A.3, one-time 21-day Completion Time allowance for Startup Transformer XST2 preventive maintenance is an administrative change only. This license amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Therefore, the proposed change does not create the possibility of a new or different 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 do not involve a significant reduction in the margin of safety. The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes do not directly affect these barriers, nor do

they involve any significant adverse impact on the DGs which serve to support these barriers in the event of an accident concurrent with a loss of offsite power. The proposed changes to the testing requirements for the plant DGs do not affect the OPERABILITY requirements for the DGs, as verification of such OPERABILITY will continue to be performed as required (except during different allowed MODES). The changes have an insignificant impact on DG availability, as continued verification of OPERABILITY supports the capability of the DGs to perform their required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Only one DG is to be tested at a time, so that the remaining DG will be available to safely shut down the plant if required. Consequently, performance of the fission product barriers will not be impacted by implementation of the proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Deletion of expired TS LCO 3.8.1, Required Action A.3, one-time 21-day Completion Time allowance for Startup Transformer XST2 preventive maintenance is an administrative change only.

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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Mike Webb, Acting Chief.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 13, 2004.

Brief description of amendments: The proposed changes will revise the Technical Specifications (TSs) to incorporate two topical reports used to determine the core operating limits of Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, and delete reference to four topical reports and a reference to NUREG–0800 that are no longer required to support CPSES, Units 1 and 2, core operating limits.

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. The licensee's analysis is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature and as such does not impact the condition or performance of any plant structure, system or component. The core operating limits are established to support Technical Specifications 3.1, 3.2, 3.3, and 3.4. The core operating limits ensure that fuel design limits are not exceeded during any conditions of normal operation or in the event of any Anticipated Operational Occurrence (AOO). The methods used to determine the core operating limits for each operating cycle are based on methods previously found acceptable by the NRC and listed in TS section 5.6.5.b. Application of these approved methods will continue to ensure that acceptable operating limits are established to protect the fuel cladding integrity during normal operation and AOOs. The requested Technical Specification changes do not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigation systems, and do not introduce any new accident initiation mechanisms.

As a result, the proposed change to the CPSES Technical Specifications does not involve any increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed administrative change.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in nature, and therefore does not involve any changes in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions, and no new failure modes are being introduced.

Therefore, the proposed administrative change to the CPSES Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature and does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the proposed administrative change.

Therefore, the proposed change to the CPSES Technical Specifications does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Michael Webb, Acting Chief.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: November 8, 2004.

Description of amendment request: To revise Technical Specification Section 4.4.5.4 to modify the definitions of steam generator (SG) tube ''Plugging Limit'' and ''Tube Inspection.''

Date of publication of individual notice in the ***Federal Register:*** November 24, 2004 (69 FR 68408).

Expiration date of individual notice: January 24, 2005.

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 e-mail to *pdr@nrc.gov.*

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: April 1, 2004.

Brief description of amendment: The amendment revises Technical Specification (TS) requirements to adopt the provisions of the TS Task Force (TSTF) change TSTF–359, regarding increased flexibility in mode changes. The availability of TSTF–359 for adoption by licensees was announced in the **Federal Register** on April 4, 2003 (68 FR 16579).

Date of issuance: November 29, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 163.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 24, 2004 (69 FR 52037).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 2004.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: October 7, 2004, as supplemented by letters dated November 12 and 18, 2004.

Description of amendment request: The amendment revised the Safety Limit Minimum Critical Power Ratio in Technical Specification 2.1.1.2 to reflect the results of cycle-specific calculations performed for Fermi 2 operating Cycles 10 and 11.

Date of issuance: November 30, 2004.

Effective date: As of the date of issuance and shall be implemented prior to startup for Fermi 2 Cycle 11 operation.

Amendment No.: 164.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. (November 9, 2005; 69 FR 64986) The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by January 10, 2005, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

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 November 30, 2004.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: January 26, 2004, as supplemented September 13, 2004.

Brief description of amendments: These amendments authorized changes to the BVPS–1 and 2 Updated Final Safety Analysis Reports (UFSARs) to revise the level of the Ohio River that is assumed at the onset of an accident during power operation to be 654.0′ mean sea level (msl) instead of 649.0′ msl for BVPS–1 and 2. The proposed change is consistent with current Technical Specification 3.7.5.1, which requires the plant to shut down when the Ohio River reaches a level below 654.0′ msl.

Date of issuance: November 29, 2004.

Effective date: As of the date of issuance and shall submit the changes authorized by these amendments with the next update of the UFSARs in accordance with 10 CFR 50.71(e).

Amendment Nos.: 264 and 145.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments authorize changes to the UFSARs.

*Date of initial notice in **Federal Register:*** March 16, 2004 (69 FR 12369).

The supplement dated September 13, 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.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2004 .

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: November 21, 2003, as supplemented by letters dated May 18, and August 23, 2004.

Brief description of amendments: These amendments revised the St. Lucie Unit 1 and 2 Technical Specifications (TSs) to eliminate certain pressure sensor response time testing requirements. Elimination of these tests is discussed in the Combustion Engineering Owners Group Topical Report CE NPSD–1167, Revision 2, ''Elimination of Pressure Sensor

Response Time Testing Requirements,'' which was approved by the NRC staff in letters dated July 24, 2000, and December 5, 2000. Specifically, these amendments revise the St. Lucie Units 1 and 2 TS Definitions 1.12, ''Engineered Safety Features Response Time,'' and 1.26, ''Reactor Protection System Response Time.''

Date of Issuance: November 30, 2004.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 195 and 137

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** September 28, 2004 (69 FR 57675).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 2004.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: November 26, 2002, as supplemented by letters dated September 8, 2003, October 30, 2003, June 21, 2004, and October 8, 2004.

Brief description of amendments: The amendments increased the total spent fuel wet storage capacity for each unit, by adding a spent fuel storage rack in the cask area in each unit's spent fuel pool. Each rack increased both units' storage capacity by 131 fuel assemblies. The amendments also included the addition of the design of the racks in Section 5.6.1.1.c of the Technical Specifications (TSs), and revised the stated spent fuel capacity in TS Section 5.6.3 and the location called out in the Design Features Sections 5.6.1.1a and b of the TSs referring to Updated Final Safety Analysis Report Appendix 14D rather the Westinghouse Report WCAP–14416–P.

Date of issuance: November 24, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos: 226 and 222.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** January 28, 2003 (69 FR 4246). The supplemental letters provided clarifying information that did not expand the scope of the original application or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated October 17, 2003, and in a Safety Evaluation dated November 24, 2004.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: August 17, 2004.

Brief description of amendment: The amendment revised Section 3.3.1, ''Oxygen Concentration,'' of the Technical Specifications to add a new action, allowing 24 hours to restore the oxygen concentration within the limit of <4% by volume if the limit is exceeded when the reactor is operating in the power operating condition.

Date of Issuance: November 29, 2004.

Effective date: November 29, 2004 and shall be implemented within 15 days of issuance.

Amendment No.: 185.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53110).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 29, 2004.

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: September 12, 2003, and its supplements dated April 23, June 4, and August 30, 2004.

Brief description of amendments: The amendments increase the current steam generator narrow range water level-low low setpoints from greater or equal to 7.0 percent allowable value and 7.2 percent nominal trip setpoint to greater than or equal to 14.8 percent allowable value and 15.0 percent nominal trip setpoint. The reactor trip setpoint is specified in TS Table 3.3.1–1, ''Reactor Trip System Instrumentation,'' and the actuation setpoint to start the auxiliary feedwater pumps is specified in TS Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation.''

Date of issuance: December 2, 2004.

Effective date: December 2, 2004, and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1–178; Unit 2–180.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 25, 2003 (68 FR 66138) The April 23, June 4, and August 30, 2004, supplemental letters provided additional clarifying information, 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 December 2, 2004.

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: December 5, 2003, as supplemented by letter dated June 4, 2004.

Brief description of amendments: The amendments revised SSES 1 and 2 Technical Specifications (TSs) by adding a requirement to apply linear heat generation (LHGR) limits if the main turbine bypass system becomes inoperable. The proposed changes clarify TS 3.7.6 to state that both minimum critical power ratio and LHGR limits for an inoperable main turbine bypass system are required if the system becomes inoperable.

Date of issuance: December 3, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 218 and 193.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 2004 (69 FR 698). The supplement dated June 6, 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.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 2004.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 12, 2004, as superseded by letter dated October 5, 2004, as supplemented by letter dated October 11, 2004.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.4.5, in conjunction with the new administrative control TS 6.8.3.o and reporting requirement TS 6.9.1.7, to establish a new programmatic, largely performance-based framework for ensuring SG tube integrity. The reactor coolant system leakage requirements of TS 3.4.6.2 are also revised.

Date of issuance: November 24, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—164; Unit 2—154.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 2004 (69 FR 53113). The October 5, 2004, letter which superseded the August 12, 2004, letter and the supplement dated October 11, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not significantly 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 November 24, 2004.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 26, 2004.

Brief description of amendments: The amendments eliminate the requirements in the TS associated with hydrogen recombiners and hydrogen monitors. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416).

Date of issuance: November 30, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—165; Unit 2—155.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 2004 (69 FR 57996).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 13th day of December 2004.

For the Nuclear Regulatory Commission.

James E. Lyons,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–27614 Filed 12–20–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8514; 34–50864; File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of establishment of the Advisory Committee on Smaller Public Companies.

SUMMARY: The Chairman of the Securities and Exchange Commission (''Commission''), with the concurrence of the other Commissioners, intends to establish the Securities and Exchange Commission Advisory Committee on Smaller Public Companies to assist the Commission in evaluating the current securities regulatory system relating to disclosure, financial reporting, internal controls, and offering exemptions for smaller public companies.

FOR FURTHER INFORMATION CONTACT: Gerald J. Laporte, Chief, or Kevin M. O'Neill, Special Counsel, at (202) 942–2950, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0310.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Securities and Exchange Commission (''Commission'') is publishing this notice that the Chairman of the Commission, with the concurrence of the other Commissioners, intends to establish the Securities and Exchange Commission Advisory Committee on Smaller Public Companies (the ''Committee''). The Committee's objective is to assess the impact of the current regulatory system for smaller companies under the securities laws of the United States and make recommendations for changes.

To achieve the Committee's goals, between 11 and 21 members will be appointed who can represent effectively the varied interests affected by the range of issues to be considered. The Committee's membership may include officers and directors of smaller companies; accountants, lawyers and other professional service providers to smaller companies; regulators; investors; and members of the public at large. The Committee's membership will be fairly balanced in terms of the points of view represented and the functions to be performed.

The Committee may be established 15 days after publication of this notice in the **Federal Register** by filing a charter for the Committee complying with the Federal Advisory Committee Act with the Committee on Banking, Housing, and Urban Affairs of the United States Senate and the Committee on Financial Services of the United States House of Representatives. A copy of the charter also will be filed with the Chairman of the Commission, furnished to the Library of Congress, placed in the Public Reference Room at the Commission's headquarters and posted on the Commission's Internet Web site at *www.sec.gov/info/smallbus.shtml.* The Committee's charter is expected to direct it to consider the following areas, including the impact in each area of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (July 30, 2002):

- Corporate disclosure and reporting requirements and federally-imposed corporate governance requirements for smaller public companies, including differing regulatory requirements based on market capitalization, other measurements of size or market characteristics;
- Accounting standards and financial reporting requirements applicable to smaller public companies;
- Frameworks for internal control over financial reporting applicable to smaller public companies, methods for management's assessment of such internal control, and standards for auditing such internal control; and
- The process, requirements and exemptions relating to offerings of securities by smaller companies, particularly public offerings.

The charter will direct the Committee to conduct its work with a view to protecting investors, considering whether the costs imposed by the current securities regulatory system for

smaller companies are proportionate to the benefits, identifying methods of minimizing costs and maximizing benefits, and facilitating capital formation by smaller companies. The Commission expects that the Committee will provide recommendations as to where and how the Commission would draw lines to demarcate companies that warrant tailored regulatory treatment based on size.

The Committee will operate for approximately 13 months from the date it is established unless, before the expiration of that time period, its charter is extended or renewed in accordance with the Federal Advisory Committee Act or unless the Commission determines that the Committee's continuance is no longer in the public interest.

The Committee will meet at such intervals as are necessary to carry out its functions. The charter is expected to provide that meetings of the full Committee will occur no more frequently than six times per year. Meetings of subgroups of the full Committee may occur more frequently.

The charter will provide that the duties of the Committee are to be solely advisory. The Commission alone will make any determinations of action to be taken and policy to be expressed with respect to matters within the Commission's authority with respect to which the Committee provides advice or makes recommendations.

The Chairman of the Commission affirms that that establishment of the Committee is necessary and in the public interest.

By the Commission.

Dated: December 16, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–27862 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–Mt

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50855; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Granting Summary Effectiveness To Request To Extend the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the Pacific Exchange, Inc., the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. and To Extend Certain Exemptive Relief

December 14, 2004.

I. Introduction and Description

On December 14, 2004, the Pacific Exchange, Inc. (''PCX'') on behalf of itself and the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''),[1] and the Philadelphia Stock Exchange, Inc. (''PHLX'') (hereinafter referred to collectively as ''Participants''),[2] as members of the operating committee (''Operating Committee'' or ''Committee'') of the Plan submitted to the Securities and Exchange Commission (''Commission'') a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.[3]

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of The Nasdaq Stock Market, Inc. (''Nasdaq'') securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities. Currently, the Plan is scheduled to expire on December 15, 2004.

This order grants summary effectiveness, pursuant to Rule 11Aa3–2(c)(4) under the Securities Exchange Act of 1934 (''Act''),[4] to the request to extend operation of the Plan, as modified by all changes previously approved, and to the request to extend certain exemptive relief (''Date Extension''). Pursuant to Rule 11Aa3–2(c)(4) under the Act,[5] the Date Extension will be effective summarily upon publication in the **Federal Register** on temporary basis not to exceed 120 days.

II. Exemptive Relief

While both Nasdaq and the NASD operate under the umbrella of a single Plan Participant, the submission of two distinct best bids and offers (''BBOs'') could be deemed inconsistent with Section VI.C.1 of the Plan.[6] Pursuant to the 13th Amendment of the Plan and Rule 11Aa3–2(a),[7] Nasdaq cannot be granted Plan Participant status until it is registered as a national securities exchange. While Nasdaq submits a distinct BBO from the NASD and until Nasdaq is registered as a national securities exchange, the NASD will submit quotes to the Plan's Securities Information Processor (''SIP'') in a manner different than specified in Section VI.C.1. of the Plan and, thus, in conflict with Commission Rule 11Aa3–2(d).[8]

As discussed at length in the notice of the 13th Amendment,[9] the Commission had determined to relieve the potential conflict among the SuperMontage approval order,[10] Rule 11Aa3–2,[11] and

[1] The Commission notes that the CSE changed its name to the National Stock Exchange, Inc. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR–CSE–2003–12).

[2] PCX and its subsidiary the Archipelago Exchange were elected co-chairs of the operating committee (''Operating Committee'' or ''Committee'') for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants.

[3] *See* letter from Bridget M. Farrell, Co-Chairman, and Michael P. Rountree, Co-Chairman, Plan Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated December 14, 2004.

[4] 17 CFR 240.11Aa3–2(c)(4).

[5] 17 CFR 240.11Aa3–2(c)(4).

[6] Section VI.C.1. of the Plan, as approved by the Operating Committee in the 13th Amendment, states that ''[t]he Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD. * * *''

[7] 17 CFR 240.11Aa3–2(a).

[8] 17 CFR 240.11Aa3–2(d). Commission Rule 11Aa3–2(d) requires a self-regulatory organization participant of national market system plan to comply with the terms of that plan.

[9] *See* Securities Exchange Act Release No. 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002) (''13th Amendment Notice'').

[10] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[11] 17 CFR 240.11Aa3–2.

the Plan, by granting the NASD an exemption under Rule 11Aa3–2(f)[12] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d)[13] until such time as Nasdaq is registered as a national securities exchange. The Plan Participants have requested an extension of such exemptive relief.

III. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)[14] and Section 11A(a)(1)[15] of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.[16] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, ''having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets,'' and cites as an objective of that system the ''fair competition * * * between exchange markets and markets other than exchange markets.''[17] When the Commission first approved the Plan on a pilot basis, it found that the Plan ''should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading.''[18] The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan through summary effectiveness furthers the goals described above by preventing the lapsing of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

The Commission also finds that it is appropriate to grant summary effectiveness to the request to extend the exemption under Rule 11Aa3–2(f)[19] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d).[20] The Commission believes that the Plan is a critical component of the national market system and that the requested exemptive relief is necessary to assure the effective operation of the Plan. The Commission believes that the requested exemptive relief extension is consistent with the Act, the Rules thereunder, and, specifically, with the objectives set forth in Sections 12(f) and 11A of the Act[21] and Rules 11Aa3–1 and 11Aa3–2 thereunder.[22]

IV. Solicitation of Comments

The Commission seeks general comments on the extension of the operation of the Plan and the extension of exemptive relief. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7–24–89 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 comment letters should refer to File No. S7–24–89. 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 amendment that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the amendment will also be available for inspection and copying at the Office of the Secretary of the Committee, currently located at the at Pacific Exchange, Inc. and Archipelago Exchange L.L.C. 100 South Wacker Drive, Suite 2000, Chicago, 60606. All submissions should refer to File No S7–24–89 and be submitted on or before January 11, 2005.

V. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act[23] and paragraph (c)(4) of Rule 11Aa3–2 thereunder,[24] that the operation of the Plan, as modified by all changes previously approved, be, and hereby is, extended and that certain exemptive relief also be extended both for a period not to exceed 120 days from the date of publication of this Date Extension in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3762 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27924]

Filing Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 14, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 7, 2005, to the Secretary,

[12] 17 CFR 240.11Aa3–2(f).

[13] 17 CFR 240.11Aa3–2(d).

[14] 15 U.S.C. 78l(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

[15] 15 U.S.C. 78k–1(a)(1).

[16] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

[17] 15 U.S.C. 78k–1(a).

[18] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

[19] 17 CFR 240.11Aa3–2(f).

[20] 17 CFR 240.11Aa3–2(d).

[21] 15 U.S.C. 78*l*(f) and 15 U.S.C. 78k–1.

[22] 17 CFR 240.11Aa3–1 and 11Aa3–2.

[23] 15 U.S.C. 78*l*(f) and 15 U.S.C. 78k–1.

[24] 17 CFR 240.11Aa3–2(c)(4).

[25] 17 CFR 200.30–3(a)(27).

Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 7, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., AEP Texas Central Company (70–10231)

American Electric Power Company, Inc., (''AEP''), a registered holding company, and AEP Texas Central Company (''TCC''), an indirect public utility subsidiary of AEP, both at 1 Riverside Plaza, Columbus, Ohio 43215 (together ''Declarants''), have filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Declarants request authority for TCC to sell its ownership interests in a 690 Megawatt generation facility located in Wilbarger County, Texas (the ''Oklaunion Facility'') to non-affiliated-third parties.

AEP currently holds vertically-integrated electric utility companies with retail utility operations in eleven states—Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.[1] TCC is a wholly owned indirect subsidiary of AEP, engaged in the transmission and distribution of electricity in its service territory located in southern Texas and in the generation and sale of electricity in the region of the Electric Reliability Council of Texas (''ERCOT''). The entire service territory of TCC is located in ERCOT.

The Texas electric restructuring law (the ''Texas Act''), signed into law in 1999, required, among other things, that utilities legally separate into a retail electric provider, a power generation company, and a transmission and distribution utility. The Texas Act provides each affected utility an opportunity to recover its generation related regulatory assets and stranded costs resulting from the legal separation of the transmission and distribution utility from the generation facilities and the related introduction of retail electric competition. Regulatory assets consist of the Texas jurisdictional amount of generation-related regulatory assets and liabilities in the audited financial statements as of December 31, 1998. Stranded costs consist of the positive excess of the net regulated book value of generation assets over the market value of those assets, taking specified factors into account, as ultimately determined by the Public Utility Commission of Texas.

TCC is selling all of its generation assets in order to determine the assets' fair market value for purposes of calculating TCC's stranded costs in accordance with the Texas Act. The divestiture of TCC's assets is being achieved through a series of sales to different purchasers. On July 2, 2004, TCC completed the sale of 3,813 MW of generating assets to a joint venture of Sempra Energy Partners and Carlyle/Riverstone Global Energy and Power Fund. TCC's sale of its interest in two co-owned 1,250 MW nuclear generating units situated in Matagorda County, Texas is the subject of a separate application to the Commission.[2]

TCC executed a contract for the sale of its 7.81% undivided interest (which corresponds to approximately 54 MW) in the Oklaunion Facility to the Golden Spread Cooperative (''Golden Spread'') for approximately $42,750,000 on January 30, 2004. Under an earlier agreement (the ''Oklaunion Agreement''), the other owners of the Oklaunion Facility have a right of first refusal to purchase the TCC interest in the Oklaunion Facility. The Oklaunion Agreement provides that the interest in the Oklaunion Facility will be divided *pro-rata* among the exercising owners whereby two or more owners each exercise their right to purchase the entire Oklaunion interest. Both of the other owners, the Public Utilities Board of the City of Brownsville (''Brownsville'') and the Oklahoma Municipal Power Authority (''OMPA'') exercised their rights of first refusal to purchase either their proportionate share or, in the event that the other failed to close, the entire TCC interest. In late June, Golden Spread filed an Application for Declaratory Judgment in Texas State Court seeking confirmation that both the City of Brownsville and OMPA's exercises were invalid and that Golden Spread was entitled to purchase the TCC interest in Oklaunion. The City of Brownsville then filed a counter claim pleading that OMPA did not validly exercise their right of first refusal and that Brownsville was therefore entitled to the entire TCC interest in Oklaunion.

Enron Corp. (70–10239)

Enron Corp. (''Enron''), an Oregon corporation and registered holding company, Four Houston Center, 1221 Lamar, Suite 1600, Houston, Texas 77010–1221, has filed an application/declaration with the Commission under sections 12(d) and 5(d) of the Act and rules 44 and 54 under the Act.

I. Background

On July 2, 1997, Enron became a holding company by acquiring all of the outstanding common stock of Portland General Electric Company (''Portland General''), its sole public-utility company subsidiary.

A. Description of Portland General

Portland General, an Oregon corporation, is an electric utility company. It is engaged in the generation, purchase, transmission, distribution, and retail sale of electricity in the State of Oregon. Portland General also sells electricity and natural gas in the wholesale market to utilities and power marketers located throughout the Western United States. Portland General's service area is located entirely within Oregon, and covers approximately 4,000 square miles, including 51 incorporated cities. At the end of 2003, approximately 1.5 million people lived within Portland General's service area and the company served approximately 754,000 retail customers.

Portland General has approximately 26,085 miles of electric transmission and distribution lines and owns 1,957 MW of generating capacity. Portland General also has long-term power purchase contracts for 510 MW from four hydroelectric projects on the mid-Columbia River and power purchase contracts of one to twenty-six years for another 740 MW from Bonneville Power Administration, other Pacific Northwest utilities, and certain Native American tribes. As of December 31, 2003, Portland General's total firm resource capacity, including short-term purchase agreements, was approximately 3,883 MW (net of short-term sales agreements of 3,910 MW). Portland General's peak load in 2003 was 3,351 MW. Portland General had 2,687 employees as of December 31, 2003. As of and for the year ended December 31, 2003, Portland General and its subsidiaries on a consolidated basis had operating revenues of $1,752 million, net income

[1] AEP subsidiaries with retail utility operations include: AEP Generating Company, TCC, AEP Texas North Company, formerly West Texas Utilities Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and Wheeling Power Company.

[2] SEC File No. 70–10253.

of $58 million, retained earnings of $545 million, and assets of $3,372 million.

Portland General is a reporting company under the Securities Exchange Act of 1934, and it files annual, quarterly and periodic reports with the Commission. Portland General is regulated by the Oregon Public Utility Commission (''OPUC'') with regard to its rates, terms of service, financings, affiliate transactions and other aspects of its business. In addition, the Federal Energy Regulatory Commission (''FERC'') regulates Portland General's activities in the interstate wholesale power markets.

B. Enron's Bankruptcy

On December 2, 2001, Enron and certain of its subsidiaries each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (''Bankruptcy Code'') in the United States Bankruptcy Court for the Southern District of New York (''Bankruptcy Court''). Enron and its subsidiaries that have filed voluntary petitions (collectively, ''Debtors'') continue to operate their businesses and manage their properties as debtors in possession. Portland General is not in bankruptcy.

On March 9, 2004, Enron registered as a holding company under the Act and the Commission issued two orders. By one of the orders (HCAR No. 27809), the Commission authorized Enron and certain subsidiaries to engage in financing transactions, nonutility corporate reorganizations, the declaration and payment of dividends, affiliate sales of goods and services, and other transactions needed to allow those applicants to continue their businesses. By the other order (HCAR No. 27810, ''Plan Order''), the Commission approved the Debtors' plan of reorganization (''Plan'') under section 11(f) of the Act.[3] The Plan was approved by the Bankruptcy Court on July 15, 2004, and the effective date of the Plan occurred on November 17, 2004. As explained in the Plan Order, the Plan does not provide for Enron to survive in the long term as an ongoing entity with any material operating businesses. Enron's role as a Reorganized Debtor is to hold and sell assets and to manage the litigation of the estates pending the final conclusion of the chapter 11 filings.

C. Sale of Portland General

Enron entered into an agreement, dated November 18, 2003 (''Purchase Agreement'') to sell all of the common stock of Portland General to Oregon Electric Utility Company, LLC (''Oregon Electric''), a recently formed entity financially backed by investment funds managed by the Texas Pacific Group, a private equity investment firm.[4] Enron expects that the sale will close in the first quarter of 2004, after the receipt of certain regulatory authorizations.

The purchase price for the issued and outstanding common stock of Portland General is a cash amount equal to (a) $1,250,000,000, subject to a purchase price adjustment based on the difference between Portland General's shareholders' equity and retained earnings at the closing date of the transaction and $1,129,422,925 (Portland General's shareholders' equity and retained earnings at December 31, 2002), plus (b) up to $10.4 million in cash based on a sharing mechanism for indemnity items settled between signing and closing of the transaction. Of the cash purchase price (subject to reduction for certain pre-closing settlement of certain specified liabilities), $94,000,000 would be placed in an escrow account at the closing and available to satisfy indemnification obligations of Enron under the Purchase Agreement.

Under the Purchase Agreement, after closing, Enron would indemnify Oregon Electric and Portland General, subject to certain limitations, for: (1) Breaches by Enron of representations, warranties and pre-closing covenants; (2) breaches by Enron of post-closing covenants; (3) certain specified Portland General and Enron related liabilities; and (4) certain tax and employee benefits liabilities related to Enron's ownership of Portland General.

Enron is obligated to pay Oregon Electric a break-up fee equal to $31.25 million (''Break-up Fee'') if Oregon Electric terminates the Purchase Agreement upon Enron's election to distribute the PGE Common Stock to creditors or upon Enron's willful breach of the Purchase Agreement.[5] Under the Purchase Agreement, Enron also agreed to reimburse Oregon Electric for its reasonable and documented expenses, up to a specified cap that increases over time, if Oregon Electric terminates the Purchase Agreement upon a non-willful breach by Enron of the Purchase Agreement. In any circumstances where Oregon Electric's expenses are reimbursed and a break-up fee is subsequently owed to Oregon Electric, the Break-up Fee would be reduced by the amount of such expenses.

In connection with the execution of the Purchase Agreement, Oregon Electric placed a letter of credit in escrow in the amount of $18,750,000 as a deposit. The full amount of the proceeds of the letter of credit would be payable to Enron if it terminates the Purchase Agreement because of Oregon Electric's breach. In addition, Enron would be entitled to receive a portion of the deposit ($5,000,000 or $10,000,000) depending on the circumstances in certain cases if Oregon Electric is unable to obtain financing for the transaction.

The transactions contemplated by the Purchase Agreement require the approval of the Bankruptcy Court, OPUC, Oregon Energy Facilities Siting Council, FERC, Federal Communications Commission, Nuclear Regulatory Commission and the Commission. The transaction is supported by the Official Unsecured Creditors' Committee in the Enron bankruptcy proceeding (''Creditors'' Committee''), and has been approved by the Enron board of directors and, as discussed below, the Bankruptcy Court.

Under the Purchase Agreement, Enron was permitted to accept a bid that represented a ''higher or better'' offer for Portland General. The Bankruptcy Court issued an order (''Bidding Procedures Order'') establishing a process for considering possible alternative better proposals to purchase the common shares of Portland General. Specifically, the Bidding Procedures Order authorized Enron to conduct an auction for the sale of the common stock to any bidder that could demonstrate that it had the financial ability to consummate the transaction and the ability to comply with all obligations under its purchase agreement (''Qualified Bidder''). Enron was directed, upon consultation with

[3] The Plan Order also constituted a report on the Plan under section 11(g) of the Act and authorized the Debtors to continue the solicitation of votes of the Debtors' creditors for acceptances or rejections of the Plan.

[4] The status of Oregon Electric after the acquisition of Portland General is the subject of a separate pending application (Commission File No. 70–10262). In a companion filing, TPG Partners IV, L.P. and TPG III Oregon Electric Investment Company, LLC, both private equity funds, have filed an application (Commission File No. 70–10263) concerning their statuses under the Act resulting from their intended investments in Oregon Electric. Both TPG Partners IV, L.P. and TPG III Oregon Electric Investment Company, LLC would be managed by Texas Pacific Group, a private equity firm that manages funds on behalf of institutional and private investors.

[5] If Oregon Electric terminates the Purchase Agreement by reason of Enron's willful breach and Enron, within the one-year period following such termination, enters into a purchase agreement for an alternative transaction, then Oregon Electric may seek additional damages from Enron equal to the difference between the purchase price that would have been payable by Oregon Electric and the purchase price payable in such alternative transaction.

the Creditors'' Committee, to consider only those bids that were presented under a contract substantially identical to the Purchase Agreement, accompanied by a deposit in an amount at least equal to the greater of $20,250,000 or 1.5% of the bidder's proposed purchase price, and received no later than noon on January 28, 2004. The Bidding Procedures Order provided that any bid: (1) Must not be subject to due diligence review or any board approval, or subject to any conditions, or the receipt of any consents, that are not otherwise required by the Purchase Agreement; and (2) must contain an initial overbid (''Initial Overbid'') in an amount that was at least $50,000,000 over and above the base purchase price in the Purchase Agreement. Bids meeting those and other requirements as to form were designated ''Qualifying Competing Bids.'' In the event there were Qualifying Competing Bids, under the Bidding Procedures Order, Enron was to conduct an auction of the common stock on February 2, 2004.

Enron provided notice of the bidding procedures to all interested persons in accordance with the Bidding Procedures Order. No bids were received, qualifying or otherwise. Accordingly, Enron did not hold the auction. By order dated February 5, 2004 (''Sale Order''), the Bankruptcy Court approved the Purchase Agreement and authorized the sale of all common stock of Portland General to Oregon Electric.

II. Requests for Authority

Enron requests authority to: (1) Sell all of the common stock of its sole public-utility company subsidiary, Portland General to Oregon Electric; and (2) deregister under the Act after completing that transaction.

American Electric Power Company, Inc., AEP Texas Central Company (70–10253)

American Electric Power Company, Inc., (''AEP'') a registered holding company, and AEP Texas Central Company (''TCC''), an indirect public utility subsidiary of AEP, both located at 1 Riverside Plaza, Columbus, Ohio 43215 (together ''Declarants''), have filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Declarants request authority for TCC to sell its interest in two co-owned 1,250 MW nuclear generating units situated in Matagorda County, Texas (''STP'') to non-affiliated third parties.

AEP currently holds vertically-integrated electric utility companies with retail utility operations in eleven states—Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.[6] TCC is a wholly owned indirect subsidiary of AEP, engaged in the transmission and distribution of electricity in its service territory located in southern Texas and in the generation and sale of electricity in the region of the Electric Reliability Council of Texas (''ERCOT''). The entire service territory of TCC is located in ERCOT.

The Texas electric restructuring law (the ''Texas Act''), signed into law in 1999, required, among other things, that utilities legally separate into a retail electric provider, a power generation company, and a transmission and distribution utility. The Texas Act provides each affected utility an opportunity to recover its generation related regulatory assets and stranded costs resulting from the legal separation of the transmission and distribution utility from the generation facilities and the related introduction of retail electric competition. Regulatory assets consist of the Texas jurisdictional amount of generation-related regulatory assets and liabilities in the audited financial statements as of December 31, 1998. Stranded costs consist of the positive excess of the net regulated book value of generation assets over the market value of those assets, taking specified factors into account, as ultimately determined by the Public Utility Commission of Texas.

TCC is selling all of its generation assets in order to determine the assets' fair market value for purposes of calculating TCC's stranded costs pursuant to the Texas Act. The divestiture of TCC's assets is being achieved through a series of sales to different purchasers. On July 2, 2004, TCC completed the sale of 3,813 MW of generating assets to a joint venture of Sempra Energy Partners and Carlyle/Riverstone Global Energy and Power Fund. TCC's sale of its interest in a 690 Megawatt generation facility located in Wilbarger County, Texas is the subject of a separate application to the Commission.[7]

TCC executed a contract for the sale of its 25.2% undivided interest (which corresponds to approximately 630 MW) in STP to Cameco South Texas Project LP, a Texas limited partnership and subsidiary of Cameco Corporation (''Cameco'') for approximately $330 million on February 27, 2004. Pursuant to an earlier agreement (the ''STP Agreement''), the other owners of STP have a right of first refusal to purchase the TCC interest in STP. The STP Agreement provides that the interest in STP will be divided *pro-rata* among the exercising owners when two or more owners exercise their right to purchase TCC's undivided STP interest.

On May 28, 2004, in accordance with the STP Agreement, two of the other owners of STP, the City of San Antonio, acting through the City Public Service Board of San Antonio (''San Antonio'') and Texas Genco, L.P., a Texas limited partnership (''Texas Genco'') exercised their rights of first refusal to purchase the entire share of the TCC interest in STP according to the terms and conditions (including the purchase price) stated in the agreement with Cameco. On September 3, 2004, TCC entered into a purchase and sale agreement with San Antonio and Texas Genco under which, subject to certain regulatory approvals, San Antonio and Texas Genco will purchase the entire TCC interest in STP. In accordance with the sale, TCC also intends to assign, transfer or otherwise sever all rights, obligations and other interest in STP Nuclear Operating Company, a nonprofit Texas corporation that operates STP under a contract.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27834 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–P

[6] AEP subsidiaries with retail utility operations include: AEP Generating Company, TCC, AEP Texas North Company, formerly West Texas Utilities Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and Wheeling Power Company.

[7] SEC File No. 70–10231.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50843; File No. SR–Amex–2004–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Providing $5 Quotation Spread Parameters for Quotations Submitted Electronically to ANTE and Correcting an Inaccurate Paragraph Designation

December 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2004, the American Stock Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Amex filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 958–ANTE to provide for quote spread parameters of up to $5 for quotations that are submitted electronically on the ANTE system and to correct the incorrect paragraph designation of Amex Rule 950–ANTE(e)(v). The proposed rule text is below. *Italics* indicate text to be added. [Brackets] indicate text to be deleted.

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Options Transactions of Registered Options Traders

No registered options trader shall initiate an Exchange option transaction on the Floor and through the facilities of the Exchange for any account in which he has an interest except in accordance with following provisions:

(a)–(b) No change.

(c) With respect to each class of options as to which he is assigned by the Exchange, a registered options trader, whenever he participates in the trading of an options class in other than a floor brokerage capacity, or is called upon by a Floor Official or a floor broker acting in an agency capacity, is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a registered options trader is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) If the underlying security is a stock or Exchange-Traded Fund Share, *options on classes trading on the ANTE system may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. Provided, however, that the $5 quote widths shall only apply following the opening rotation in each security and shall exclude quotes given in open outcry in ANTE classes, during which times the quote spreads must comply with the following:* bidding and offering so as to create differences of no more than $0.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2, no more than $0.40 where the prevailing bid is $2 but does not exceed $5, no more than $0.50 where the prevailing bid is more than $5 but does not exceed $10, no more than $0.80 where the prevailing bid is more than $10 but does not exceed $20, and no more than $1 where the last prevailing bid is more than $20. In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.

If the underlying security is a Treasury bill or certificate of deposit, bidding and offering so as to create differences in premium quotations of no more than 0.06 between the bid and the offer for each option contract for which the last preceding transaction price was 0.12 or less, no more than 0.12 where the last preceding transaction price was more than 0.12 but did not exceed 1.20, and no more than 0.16 where the last preceding transaction price was more than 1.20; and

If the underlying security is a Treasury bond or Treasury note, bidding and offering so as to create differences of no more than ⅛% of the principal amount of the underlying security between the bid and the offer for each option contract for which the last preceding transaction price was ¼% or less, no more than ¼% where the last preceding transaction price was more than ¼% but did not exceed 4%, and no more than ⅜% where the last preceding transaction price was more than 4%;

Provided that the Exchange may establish differences other than the above for one or more series or classes of options.

(ii) No change.

(d)–(i) No change.

ANTE Rules of General Applicability

(a)–(d) No Change.

(e) The types of orders specified in Rule 131 and the following additional types of orders shall be applicable to Exchange option transactions:

(i)–(vi) No Change.

(e)[(v)]*(vii)* Ratio Order—A Ratio Order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio. For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(f)–(n) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 958–ANTE currently contains maximum spread parameters (the difference between the quoted bid and offer) applicable to specialists' and registered options traders' quotations in options. Specifically, Amex Rule 958–ANTE requires that the specialists and registered options traders bid and offer to create differences of no more than $0.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2, no more than $0.40 where the prevailing bid is $2 but does not exceed $5, no more than $0.50 where the prevailing bid is more than $5 but does not exceed $10, no more than $0.80 where the prevailing bid is more than $10 but does not exceed $20, and no more than $1 where the last prevailing bid is more than $20. The rule further provides that in the event that the bid/ask differential in the underlying security is greater than these bid/ask differential, the permissible

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

price differential for any in-the-money option series may be identical to those in the underlying security market.

The primary purpose of the quote spread requirements is to help to maintain narrow spreads in options. The Amex believes that these requirements can have the unintended consequence of requiring specialists and registered options traders to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.

The Amex proposes to amend Amex Rule 958–ANTE to permit option quote spread parameters of up to $5, regardless of the price of the bid, on quotes that are submitted electronically on the ANTE system. The $5 quote width shall apply only to classes trading on the ANTE system and only following the opening rotation. Additionally, in open outcry, specialists and registered options traders in those same classes would be required to give verbal quotes that comply with the legal width requirements established in Amex Rule 958–ANTE(c)(i) and set forth to specifically govern the above-mentioned exceptions to the proposed $5 quote spread provision.

The Amex notes that in open outcry, when a floor broker requests a market, specialists and registered options traders have the ability to evaluate all pricing information publicly available prior to responding with a quote. Moreover, a specialist or registered options trader typically responds with one quote at a time, which substantially lessens the likelihood of multiple executions across different series. The ability to evaluate pricing information prior to giving a verbal quote is not a luxury that a specialist or registered options trader enjoys on the electronic side, where the specialist or registered options trader could execute numerous transactions before having the ability to adjust his or her quotes.

It is the Amex's position that the competitive market making structure of ANTE and the existence of vigorous inter-market competition provide strong incentives for market participants to quote competitively and enter quotes and orders that improve the price and depth of the market. The Amex notes that ANTE allows market makers to quote independently of the specialist, such that the Amex Best Bid and Offer is selected from an array of competitive bids and offers, rather than merely being composed of the specialist's bid and offer. The Amex believes that the ability of market makers to quote independently eradicates the need for the maximum spread parameters that currently apply.

Additionally, the Amex proposes amend Amex Rule 950–ANTE to correct an incorrect paragraph designation. On September 23, 2004, the Exchange submitted a proposal amending Amex Rules 950 and 950–ANTE to allow ratio orders, with certain permissible ratio limits, to be executed through the Amex. The proposal added paragraphs defining ''Ratio Orders'' to both Amex Rules 950 and 950–ANTE. Both paragraphs were numbered (e)(v), even though the Exchange already had a rule numbered Amex Rule 950–ANTE(e)(v). Unfortunately, the Amex did not become aware of this inconsistency until after the notice for the proposal was issued.[5] Accordingly, the Amex seeks to correct the paragraph designation of the definition of ''Ratio Orders'' in Amex Rule 950–ANTE by renumbering it from paragraph (e)(v) to paragraph (e)(vii).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] As required under Rule 19b–4(f)(6)(iii), the Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6). In this regard, the Amex notes that the proposed spread parameters are substantially similar to a Chicago Board Options Exchange, Inc. (''CBOE'') rule that the Commission approved.[12] In addition, the Amex believes that the renumbering of the incorrectly numbered paragraph (e)(v) in Amex Rule 950–ANTE is a change in formatting rather than a substantive change and, as such, meets the requirements of Rule 19b–4(f)(6). The Amex believes that a waiver of the 30-day pre-operative delay will allow the Amex to remain competitive with the CBOE and allow expeditious and accurate publication of the Amex's rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Commission notes that this proposal is similar to pilot programs adopted by the International Securities Exchange, Inc. (''ISE'') and the CBOE that the Commission approved on a permanent

[5] *See* Release No. 34–50525 (October 13, 2004), 69 FR 61875 (October 21, 2004), (notice of filing and immediate effectiveness of File No. SR–Amex–2004–77).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 50079 (July 26, 2004), 69 FR 45858 (July 30, 2004) (order approving File No. SR–CBOE–2004–44) (''CBOE Order'').

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

basis,[14] and to rule changes adopted by the Pacific Exchange, Inc. (''PCX''), the Boston Stock Exchange, Inc. (''BSE''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') that were effective on filing.[15] Neither the ISE's proposal nor the CBOE's proposal received any comments. The Commission believes that the Amex's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the ISE's and the CBOE's proposals. In addition, the Commission believes that allowing the Amex to implement $5 quotation spread parameters like those adopted by ISE, CBOE, PCX, BSE, and Phlx will help the Amex to compete with those exchanges. The Commission also believes that revising the paragraph numbering in Amex Rule 950–ANTE will ensure that the Amex's rules are numbered correctly. For these reasons, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–91 and should be submitted on or before January 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[14] *See* Securities Exchange Act Release No. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (order approving File No. SR–ISE 2003–22); and CBOE Order, *supra* note 12.

[15] *See* Securities Exchange Act Release Nos. 50538 (October 14, 2004), 69 FR 62105 (October 22, 2004) (notice of filing and immediate effectiveness of File No. SR–PCX–2004–89); 50669 (November 16, 2004), 69 FR 67968 (November 22, 2004) (notice of filing and immediate effectiveness of File No. SR–BSE–2004–47); and 50728 (November 23, 2004), 69 FR 69982 (December 1, 2004) (notice of filing and immediate effectiveness of File No. SR–Phlx–2004–74).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50850; File No. SR–Amex–2004–87]

Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Contingent Principal Protected Notes Linked to the Performance of the Standard and Poor's 500 Composite Stock Price Index

December 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade contingent principal protected notes, the performance of which is linked to the Standard and Poor's 500 Composite Stock Price Index (''S&P 500'' or ''Index'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the S&P 500 that provide for contingent principal protection (''Contingent Principal Protected Notes'' or ''Notes'').[4]

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990) 55 FR 8624 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Wachovia Corporation (''Wachovia'') and Standard & Poor's, a division of The McGraw-Hill Companies, Inc., (''S&P'') have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Wachovia and certain affiliates

Wachovia will issue the Notes under the name ''Trigger CAPITALS.'' ™ The Index is determined, calculated, and maintained solely by S&P.[5] The Notes will provide for an uncapped participation in the positive performance of the S&P 500 during their term while also reducing the risk exposure to the principal investment amount as long as the Index does not at any time decline to or below a pre-established level to be determined at the time of issuance (''Trigger Level''). This Trigger Level will be a pre-determined percentage decline from the level of the Index at the close of the market on the date the Notes are priced for initial sale to the public (''Index Starting Level''). The Issuer expects that the Trigger Level will be approximately 75% of the Index Starting Level. A decline of the Index to the Trigger Level is referred to as a ''Trigger Event.''

The Contingent Principal Protected Notes will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The principal amount of each Note is expected to be $1,000. The Notes will have a term of at least one (1) but no more than ten (10) years. The Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount as long as the S&P 500 never experiences a Trigger Event. In the case of a positive Index return, the holder would receive the full principal investment amount of the Note plus the product of $1,000 and the quotient of the Index Ending Level (as defined below) divided by the Index Starting Level. In the case of a negative Index return, if the Index declines but never reaches the Trigger Level, the holder will receive the principal investment amount of the Notes at maturity. If, however, the Notes experience a Trigger Event at any time during the term, the holder loses the ''principal protection'' and will be entitled to receive a payment based on the percentage change of the Index, positive or negative. Thus, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, if the Index experiences a negative return and a Trigger Event, the Notes would be fully exposed to any decline in the level of the S&P 500.[8] The Notes are not callable by the Issuer or redeemable by the holder.

The payment that a holder or investor of a Note will be entitled to receive (''Maturity Payment Amount'') will depend on the Index Starting Level and the relation of the level of the S&P 500 at the close of the market on the fifth business day (''Valuation Date'') prior to maturity of the Notes (''Index Ending Level''). In addition, whether the Notes retain ''principal protection'' or are fully exposed to the performance of the Index is determined by whether the S&P 500 experiences a Trigger Event at any time during the term of the Notes. In the event that the Valuation Date occurs on a non-trading day or if a market disruption event[9] occurs on such date, the Valuation Date will be the next trading day on which no market disruption event occurs.

If the percentage change of the Index is positive, the Maturity Payment Amount per Note will equal:

$$\$1{,}000 \times \left(\frac{\text{Index Ending Level}}{\text{Index Starting Level}} \right)$$

If the percentage change of the Index is zero or negative and the Index never experience a Trigger Event, the Maturity Payment Amount per Note will equal the principal investment amount of $1,000.

If the Index experiences a Trigger Event at any time during the term, the Maturity Payment Amount per Note will equal:

$$\$1{,}000 \times \left(\frac{\text{Index Ending Level}}{\text{Index Starting Level}} \right)$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the S&P 500. The Notes do not pay interest.[10] The Notes are designed for investors who want to participate or gain exposure to the S&P 500 while partially limiting their investment risk and who are willing to

and subsidiaries in connection with certain securities including these Notes. S&P is not responsible for, and will not participate in the issuance and creation of, the Notes.

[5] The S&P 500 is a broad-based stock index which provides an indication of the performance of the U.S. equity market. The S&P 500 is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on Amex or the New York Stock Exchange, Inc. (''NYSE'') or traded through The Nasdaq Stock Market, Inc. (''Nasdaq''). The Index is calculated and disseminated every 15 seconds to numerous market data vendors. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on December 13, 2004.

[6] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer who is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or the aggregate market value has become so reduced as to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A negative return of the S&P 500, together with a Trigger Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose the entire investment amount.

[9] A ''market disruption event'' is defined as the failure of the primary market or related markets to open for trading during regular trading hours or the occurrence or existence of any of the following events: (i) A trading disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; (ii) an exchange disruption, if material, at any time during the one hour period that ends at the close of trading for a relevant exchange or related exchange; or (iii) an early closure. A ''trading disruption'' generally means any suspension of, or limitation imposed on trading by, the relevant exchange or related exchange or otherwise, whether by reason of movements in price exceeding limits permitted by the relevant exchange or related exchange or otherwise (i) relating to securities that comprise 20% or more of the level of the Index or (ii) in options contracts or futures contracts relating to the Index on any relevant related exchange. An ''exchange disruption'' means any event (other than a scheduled early closure) that disrupts or impairs the ability of market participants in general to (i) effect transactions in, or obtain market values on, any relevant exchange or related exchange in securities that comprise 20% or more of the level of the Index or (ii) effect transactions in options contracts or futures contracts relating to the Index on any relevant related exchange. A ''related exchange'' is an exchange or quotation system on which futures or options contracts relating to the Index are traded.

[10] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on December 13, 2004.

forego market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and options linked to the performance of the S&P 500.[11]

The Exchange notes that S&P announced a change to its methodology so that Index weightings are based on the ''public float'' of a component stocks and not those shares of stock that are not publicly traded.[12] On March 1, 2004, S&P announced that it intends to shift its major indexes, such as the S&P 500, to a ''float-adjusted'' market capitalization index. In the float-adjusted market capitalization index, the value of the index will be calculated by multiplying the public float of each component by the price per share of the component. The result is then divided by the divisor. Accordingly, a float-adjusted market capitalization index will exclude those blocks of stocks that do not publicly trade from determining the weight for a stock in the index. The transition from a market capitalization weighted index to a float-adjusted capitalization weighted index will be implemented over an 18 month period. In September 2004, S&P published procedures and float adjustment factors, and began calculation of provisional float adjusted indexes.[13] S&P started calculating a provisional index alongside the regular index, although there is still only one official set of index values. In March 2005, the non-provisional index values will then shift to partial float adjustment, using float adjustment factors that represent half of the total adjustment, based on the information published in September 2004. In September 2005, the shift to float adjustment will be completed so that official index values will be fully float-adjusted, and the provisional indexes will be discontinued.

As of October 18, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of approximately $359.7 billion to a low of approximately $505 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 9 million shares to a low of approximately 819,817 shares. The Exchange represents that the Index levels will be disseminated at least once every fifteen (15) seconds throughout the trading day.

Because the Notes are issued in $1,000 denominations, the Amex's existing debt floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, Wachovia will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[11] *See e.g.* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index) (SPDR); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes); and 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (approving the listing and trading of Wachovia Contingent Principal Protected Notes on the S&P 500).

[12] *See* S&P Press Release dated March 1, 2004, available at *www.standardandpoors.com.*

[13] The Exchange clarified that S&P published procedures and float adjustment factors on September 28, 2004. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Molly M. Kim, Attorney, Division, Commission, on December 2, 2004.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[15] *See* Amex Rule 462 and Section 107B of the Company Guide.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–87 and should be submitted on or before January 11, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.[18] The Commission notes that the proposal is similar to several approved instruments currently listed and traded on Amex.[19] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[20]

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[21] The Commission also notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.[22] Thus, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, NYSE, and Amex. Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities compromising the Index or raise manipulative concerns. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Wachovia, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Wachovia.[23]

Finally, the Commission notes that the value of the Index will be widely disseminated, at least once every fifteen (15) seconds throughout the trading day. The Exchange represents that the Index will be determined, calculated, and maintained by S&P.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on Amex.[24] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[25] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[26] that the proposed rule change (SR–Amex–2004–87) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27836 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–P

[18] *Id.*

[19] *See* Securities Exchange Act Release Nos. 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes); and 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (approving the listing and trading of Wachovia Contingent Principal Protected Notes on the S&P 500).

[20] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* Company Guide Section 107A.

[22] 15 U.S.C. 78l.

[23] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[24] *See supra,* note 17.

[25] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50853; File No. SR–CBOE–2004–50]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend Its Rules Regarding Limitations on Designated Primary Market-Makers Putting Into Effect Stop and Stop-Limit Orders

December 14, 2004.

On July 29, 2004, the Chicago Board Options Exchange, Inc (''CBOE'') 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 its rules regarding limitations on Designated Primary Market-Makers (''DPMs'') putting into effect stop and stop-limit orders. On October 8, 2004, the Exchange filed amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 21, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[6] which requires that the Exchange's rules promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

The Exchange proposes to automate the handling of stop and stop-limit orders on CBOE's Hybrid trading system such that stop and stop limit orders would be handled automatically by the Hybrid system rather than by the DPM. In addition, the Exchange proposes to eliminate the restrictions which generally prohibit a DPM from initiating a transaction for its own account that would put into effect any stop or stop-limit orders which may be in the book or which the DPM represents as an agent. Under the proposal, stop and stop-limit orders would reside on the Hybrid system invisibly so that the DPM would not know whether a transaction would trigger a stop or stop-limit order. Further, the DPM would no longer handle the stop order at any point or have any influence to purposefully affect triggering the stop or the ultimate execution price of the order. The Commission believes that the restrictions on DPM transactions for stop and stop-limit orders are no longer necessary for orders that are handled by the Hybrid system because such orders are not visible to or handled by the DPM. Accordingly, the Commission finds that the proposal is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7] the proposed rule change (SR–CBOE–2004–50), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27863 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angelo Evangelou, Managing Senior Attorney, Legal Division. CBOE, to John Roeser, Senior Special Counsel, Division of Market Regulation, Commission, dated October 6, 2004 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 50542 (October 14, 2004), 69 FR 61879.

[5] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50848; File No. SR–NASD–2004–133]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change To Amend NASD Rule 9522 (''Initiation of Eligibility Proceeding; Member Regulation Consideration'') To Give Member Regulation the Authority To Approve the MC–400 Applications of Statutorily Disqualified Persons Who Will Be Engaged Solely in Clerical and/or Ministerial Activities

December 14, 2004.

On September 1, 2004, the National Association of Securities Dealers, Inc., (''NASD'') 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 NASD Rule 9522 (''Initiation of Eligibility Proceeding; Member Regulation Consideration'') to give Member Regulation the authority to approve the MC–400 applications of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities. The proposed rule change was published for notice and comment in the **Federal Register** on November 10, 2004.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [4] and, in particular, the requirements of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds the proposed rule change is consistent with section 15A(b)(8) of the Act,[6] which requires that NASD rules provide a fair procedure for the denial of membership to any person seeking membership therein.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7], that the proposed rule change (SR–NASD–2004–133) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27833 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50626 (November 3, 2004), 69 FR 65238.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(8).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50862; File No. SR–NASD–2004–150]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment 1 Thereto by the National Association of Securities Dealers, Inc. Relating to an Interpretation of Rule 3350

December 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 4, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 6, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] 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 the Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to implement an interpretation of NASD Rule 3350, the ''Short Sale Rule,'' as it applies to the execution functionality of the Nasdaq Market Center. Specifically, Nasdaq is interpreting Rule 3350(a) to establish that the bid arrow for each security subject to the Rule will be programmed to be an ''up'' arrow at the opening of the market, rather than calculated based upon changes from the previous day's closing bid.

Pursuant to Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1) thereunder,[5] Nasdaq has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and therefore the proposed rule change is effective immediately upon filing.

The proposed rule language for this proposal is set forth below. Additions are italicized.[6]

* * * * *

IM–3350. Short Sale Rule

(a)–(c) No Change.

(d) Nasdaq calculates changes to the inside bid displayed in the Nasdaq Market Center and disseminates a ''bid arrow'' via Nasdaq data feeds for market participants to use to comply with Rule 3350 when utilizing the execution functionality of the Nasdaq Market Center. The initial bid arrow each day shall be calculated at market open as follows.

(1) *For stocks subject to Rule 4709(c), the initial bid arrow after completing the process described in Rule 4709(c)(1) through (3) shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the system begins processing pursuant to Rule 4709(c)(4).*

(2) *For stocks described in Rule 4704(d), the initial bid arrow at the conclusion of the Nasdaq Opening Cross shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the Nasdaq Opening Cross concludes.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Rule 3350(a)(2) states that with respect to trades executed on or reported to Nasdaq, ''no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security.'' Between the hours of 9:30 a.m. and 4 p.m., when Rule 3350 operates, Nasdaq continuously calculates changes to the best bid and disseminates that information to market participants via a ''bid arrow'' that is included in Nasdaq's quotation data feeds.

Rule 3350 is silent about how the bid arrow is to be calculated at the beginning of the trading day when Nasdaq is calculating its first inside bid and the first inside bid change. Upon approval of the Rule, the NASD issued a Notice to Members explaining the Rule's operation, which states that

> • The calculation of ''up bids'' and ''down bids'' at the opening incorporates bids from the previous close. Thus, if the opening inside bid is the same as the previous day's closing inside bid, and the closing bid was a down bid, then the opening bid would be a down bid. Similarly, if the opening inside bid is below the previous day's closing inside bid, the opening inside bid is a down bid.''

NASD NTM 94–68 (Aug. 1994) (Q&A #5). Thus, while there is no rule language or interpretation in the NASD rule manual, the publicly stated practice has been to calculate the opening bid tick by referring back to the prior day's closing bid.

Nasdaq believes that referring back to the previous day's closing bid no longer offers the investor protections that it did in 1994. In the interim, Nasdaq believes that the increase in quoting and trading after hours has reduced the relevance of the previous day's closing bid to the direction of the bid arrow at 9:30. In addition, Nasdaq believes the increased levels of transparency and surveillance in Nasdaq have reduced the risk of undetected manipulation and permit the NASD to monitor the types of activities that Rule 3350 is designed to prevent.

Nasdaq has determined that the better approach is to designate the opening bid arrow as an up arrow for all securities that are subject to the Rule. Under this approach, Nasdaq would program its system to generate and disseminate an up arrow for all subject securities at the start of trading, and to compute the next bid arrow by comparing the first bid change to it. The first bid arrow would always be up, but would immediately turn down if the first bid change to be processed after the market opens is at a price below the opening bid.

Disseminating an up arrow at the conclusion of the Nasdaq Opening Cross or at 9:30 for stocks in which there is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Kathy A. England, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2004. Amendment No. 1 provides additional explanatory text that relates to the purpose of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at *http://www.nasd.com.*

no cross, is consistent with the Exchange Act and the policy underlying short sale regulation. Nasdaq believes that short selling provides the market with important benefits, such as market liquidity and pricing efficiency, and that short selling should not be restricted unnecessarily. As a result, the primary objective of short sale regulation is to prevent manipulative short selling, such as ''bear raids'' from driving the price of securities through successively lower price levels. Nasdaq also believes that its two opening processes, the Nasdaq Opening Cross and the Modified Opening Process, will reduce the incentive and potential effectiveness of manipulative short selling at the open by aggregating substantial trading interest and executing it in an organized, transparent fashion. After those processes are complete, the short sale bid arrow is immediately recalculated according to the first bids Nasdaq receives, making it immediately available to detect and address problematic short selling that could occur on Nasdaq. Nasdaq also notes that Nasdaq's proposed regulation of short selling is far more effective than the practice in other markets that currently trade Nasdaq securities with no price test at all.

Nasdaq will implement this change with the launch of its recently proposed modified opening process described in SR–NASD–2004–71.[7] In that filing, Nasdaq proposed to establish an Opening Cross for certain Nasdaq-listed stocks and to improve the opening process for all others. Under the interpretation herein, the bid arrow would be designated as an up arrow during the Opening Cross, which will be the first activity in the market at 9:30. The bid arrow would be up at the conclusion of the Opening Cross, and would change based upon the first bid change processed immediately following the Opening Cross. For Nasdaq stocks for which there is no Opening Cross, the bid arrow will be designated as an up arrow immediately at 9:30 and then will change based upon the first bids processed after 9:30.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change is consistent with the Act in that it updates Nasdaq's short sale rule to reflect the increase in after-hours and pre-opening trading and also promotes compliance with and regulation of short sale requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[9] of the Act, and subparagraph (f)(1) of Rule 19b–4,[10] because the proposal constitutes a stated policy, practice, or interpretation with respect to meaning, administration, or enforcement of an existing NASD rule. At any time within 60 days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–150 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–150. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–150 and should be submitted on or before January 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3761 Filed 12–20–04; 8:45 am]

BILLING CODE 8010–01–P

[7] Release No. 34–50405 (Sept. 16, 2004), 69 FR 57118 (Sept. 23, 2004) (Notice of Filing).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 6, 2004, the date Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region IV North Florida District Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) North Florida District Advisory Council located in Jacksonville, Florida, will host a public meeting at 12 p.m. e.s.t. on Wednesday, January 19, 2005 at the SBA North Florida District Office located at 7825

Baymeadows Way, Jacksonville, FL 32256, to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than Monday, January 3, 2005, in order to be placed on the agenda.

Contact information: Wilfredo J. Gonzalez, District Director, U.S. Small Business Administration, 7825 Baymeadows Way; Suite 100B, Jacksonville, FL 32256, Telephone (904) 443–1900, FAX (202) 481–4188.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 04–27831 Filed 12–20–04; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States-Oman Free Trade Agreement Negotiations

AGENCIES: Office of the United States Trade Representative; Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of a proposed free trade agreement (FTA) between the United States and Oman on U.S. employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, February 16, 2005, to be assured of timely consideration.

ADDRESSES: Submissions by electronic mail: *FR0513@ustr.eop.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

In accordance with section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), on November 15, 2003, the USTR notified the Congress of the President's intent to initiate FTA negotiations with Oman. Pursuant to the requirements of the Trade Act of 1974, the USTR requested the U.S. International Trade Commission (ITC) to provide advice on probable economic effects no later than February 28, 2005. In addition, USTR published a notice in the **Federal Register** soliciting views from the public on the negotiations in general, and the TPSC will hold a public hearing on January 14, 2005. The United States intends to begin negotiations with Oman in March 2005.

2. Employment Impact Review

Section 2102(c)(5) of the Trade Act (19 U.S.C. 3802(c)(5)) directs the President to review the impact of future trade agreements on U.S. employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public. USTR and Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a notice in the **Federal Register** soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

In order to ensure prompt and full consideration of response, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''U.S.-Oman FTA Employment Impact Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel files. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters ''BC-,'' and the file name of the public version should begin with the character ''P-.'' The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday.

Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–27818 Filed 12–20–04; 8:45 am]

BILLING CODE 3190–W5–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States-United Arab Emirates Free Trade Agreement Negotiations

AGENCIES: Office of the United States Trade Representative; Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of a proposed free trade agreement (FTA) between the United States and the United Arab Emirates (UAE) on U.S. employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, February 16, 2005, to be assured of timely consideration.

ADDRESSES: Submissions by electronic mail: *FR0512@ustr.eop.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

In accordance with section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), on November 15, 2003, the USTR notified the Congress of the President's intent to initiate FTA negotiations with the UAE. Pursuant to the requirements of the Trade Act of 1974, the USTR requested the U.S. International Trade Commission (ITC) to provide advice on probable economic effects no later than February 28, 2005. In addition, USTR published a notice in the **Federal Register** soliciting views from the public on the negotiations in general, and the TPSC will hold a public hearing on January 12, 2005. The United States intends to begin negotiations with the UAE in March 2005.

2. Employment Impact Review

Section 2102(c)(5) of the Trade Act (19 U.S.C. 3802(c)(5)) directs the President to review the impact of future trade agreements on U.S. employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public. USTR and Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a notice in the **Federal Register** soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

In order to ensure prompt and full consideration of response, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''U.S.–UAE FTA Employment Impact Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Spreadsheets submitted as supporting documentation are acceptable as Quattro Pro or Excel files. If any document submitted electronically contains business confidential information, the file name of the business confidential version should begin with the characters ''ABC-,'' and the file name of the public version should begin with the character ''P-.'' The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–27819 Filed 12–20–04; 8:45 am]

BILLING CODE 27819–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval Of Noise Compatibility Program for Reid-Hillview Airport, San Jose, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Santa Clara County, California under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended, (Public Law 93–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 13, 2004, the FAA determined that the noise exposure maps submitted by Santa Clara County under Part 150 were in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program for Reid-Hillview Airport is November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, Supervisor, Planning Section, San Francisco Airports District Office, Western-Pacific Region, Federal Aviation Administration, 831 Mitten Road, Burlingame, California, 94010. Telephone: (650) 876–2778, extension 610. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Reid-Hillview Airport (RHV), effective November 3, 2004. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

The Santa Clara County, California submitted to the FAA on July 16, 2002 the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 2000 through September 2002. The Reid-Hillview Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on January 13, 2004. Notice of this determination was published in the **Federal Register** on February 3, 2004.

The Reid-Hillview Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from 2002 to beyond the year 2007. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 USC 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on May 7, 2004, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 33 proposed actions for noise abatement, noise mitigation, land use planning and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Associate Administrator for Airports, effective November 3, 2004.

Outright approval was granted for 20 of the specific program measures. The approved measures included such items as: Establish a voluntary measure that recommends a preferential Runway use-arrivals on Runway 31L & departures on Runway 31R; Encourage use of minimum power settings on departure; Encourage standard glide slope arrival procedures to minimize power on arrival; Create new engine run-up area for twin-engine aircraft (designated at the compass rose as the site for maintenance run-ups); Implement a fair disclosure policy to work with the California Department of Real Estate to enhance the public notice of airport nose level information during residential sales transactions; Implement policy guidance for amendments in the city of San Jose 2020 General Plan to incorporate recommendations for preventing or mitigating unwanted noise and incorporating land use recommendations of the [Airport Land use Commission] ALUC Plan; Soundproofing existing development through a noise insulation program to ensure acceptable interior noise levels for single-family residences within the 2002 CNEL 65 dB(A) and greater contours; Implement Planning commission review policy guidance for consideration of all types of proposed development within the 2002 CNEL 60

dB(A) and greater contour; County Airport Administration to provide an airport noise impact boundary identification as means to monitor new land use proposals and ensure the [Airport Land Use Plan] ALUP is enforced; Encourage pilots to ''Fly Friendly''; Encourage flight training schools to train pilots to ''Fly Friendly''; Continually publicize RHV complaint Hotline; Install noise monitors in the RHV environs to measure and compare unusual or high level noise aircraft events with voice recorder system; Install a radar collection system to match aircraft noise events to radar tracks; Establish an Airport/Airport user/Community Noise committee after noise monitor and radar collection system are in place to discuss issues on a quarterly basis; Create a position at RHV to focus on noise abatement and compliance programs and to investigate noise complaints; Update the RHV Part 150 Study NEM and NCP within five years of FAA Approval; Update and distribute the pilot noise handout with the FAA approved noise abatement measures; Revise the noise abatement signs to reflect the FAA Approved noise abatement measures; Maintain information about RHV's noise abatement program on the County's Web site.

The FAA has approved in part and disapproved in part, the following two land use management elements for the purposes of FAR Part 150: A County purchase assurance program that guarantees to noise-impacted property owners the County would provide opportunities for noise sensitive residences to relocate while maintaining the stability of the neighborhood; and Implement public land use development criteria to provide policy guidance for development of public uses within the 2002 CNEL 60dB(A) and greater contours. The FAA has approved in part for study and disapproved in part for construction, pending submission of additional information to demonstrate a noise benefit, one land use management element. The partial approval is limited to evaluation of study information of the noise benefit of the construction of sound buffers/barriers to provide noise level reduction for residential areas immediately adjacent to Reid-Hillview Airport.

The FAA disapproved 9 of the specific program measures for the purposes of Part 150. The disapproved measures included such items as: Voluntary limitation on aircraft departures to specific times; Voluntary limitation on aircraft touch-and-go operations to specific days and times; Prohibit intersection departures; Restrict Jet Operations to FAR Part 36 Stage 3 jets; Prohibit formation arrivals and departures; Prohibit simulated emergencies; Prohibit low-level fly-bys except for emergency requirements; Encourage pilots to modify aircraft to decrease noise emissions; Soundproofing existing single-family development within the 2002 CNEL 60–65 dB(A) contour area.

The FAA has taken no action on one noise abatement measure for the purposes of Part 150: Revise flight track for aircraft departing Runway 31R (modify the Quiet One departure flight track) measure. The measure relates to flight procedures under 49 U.S.C. 47504(b) and will require additional documentation to make a determination. Additional analysis and communication between the airport operator, the FAA Western-Pacific Air Traffic Division, and the local Airport Traffic Control Tower management is required.

These determinations are set forth in detail in the Record of Approval signed by the Associate Administrator for Airports on November 3, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Santa Clara County. The Record of Approval also will be available on-line at: *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Hawthorne, California on December 8, 2004.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 04–27823 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New York Airbrake Corporation [Waiver Petition Docket Number FRA–2000–7367]

The New York Air Brake Corporation (NYAB) seeks modification of the existing waiver FRA–2000–7367 (formerly H–95–3) to include its new CCB–26 electronic airbrake system. The existing waiver, which was first granted on September 13, 1996, extended the interval for cleaning, repairing, and testing pneumatic components of the NYAB Computer Controlled Brake (CCB, now referred to as CCB–I) locomotive air brake system under 49 CFR 229.27(a)(2) and 49 CFR 229.29(a) from 736 days to 5 years. This waiver was modified to include NYAB's CCB–II electronic air brake system on August 20, 1998. Based on successful performance of the two NYAB electronic air brake systems under the conditions of the 1996 and 1998 waivers, the waiver was extended for another five years on September 10, 2001 and the conditions of the waiver were modified on September 22, 2003.

NYAB describes the new CCB–26 electronic air brake system as an adaptation of the CCB–II system designed to be used on locomotives without integrated cab electronics. It uses many of the same sub-assemblies of pneumatic valves, electronic controls and software (referred to as line replaceable units or LRUs) as the CCB–II. Some changes have been made to simplify the system while maintaining or increasing the level of safety. For example, the penalty brake interface has been changed to mimic the 26L system interface, allowing for a fully pneumatic penalty brake application. Also, the brake cylinder pilot pressure development has been simplified from an electronic control to a fully pneumatic version based on proven components.

Much of the software and diagnostic logic which detects critical failures and takes appropriate action to effect a safe stop has been carried over from CCB–II. Overall, NYAB characterizes the CCB–26 as being more similar to CCB–II than CCB–II is to CCB–I. As a final check on the performance of the CCB–26 system, it will be included in existing NYAB failure monitoring and recording systems as required by the already effective waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–7367) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on December 13, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–27901 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway [Waiver Petition Docket Number FRA–2004–19512]

The Canadian National Railway (CN) seeks a waiver of compliance from certain provisions of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.* Specifically, CN wants relief from the requirements of § 232.215, Transfer Train Brake Tests, for train movements to and from their yard at Flat Rock, Michigan, to the Ford Motor Company's Woodhaven Stamping Plant (Fordhaven) in Woodhaven, Michigan.

The transfer of cars from the Flat Rock Yard to Fordhaven is a maximum distance of 3.32 miles. The return movement is a maximum distance of 1.27 miles. Each day, there are typically two transfer moves from the Flat Rock Yard to Fordhaven and two return moves. The average train consist of 35 to 40 hi-cube boxcars. Cars going to Fordhaven contain empty parts racks, approx. 56 tons per car. Cars leaving Fordhaven contain loads of automotive body parts, approx. 73 to 96 tons per car. This transfer movement travels over one public grade crossing at Van Horn Road. CN states that rail traffic movements across this roadway is moderate and often includes switching movements without trainline air.

CN contends that they have been making these transfer movements at this location without any air brake tests for the past 37 years, based on their belief that there was already an existing waiver in place granting them the authority to make such a move. However, CN has not been able to secure any documentation to support such a waiver exists. CN is only aware of only two occasions where FRA issued citations for failure to perform an air brake test for these transfer moves, one in 1982 and again in 2004.

CN states that this waiver is necessary to ensure the ability to provide timely service to the Ford Motor Company, so that production at the plant is not shut down.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–19512) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 13, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–27900 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Union Railroad Company [Docket Number FRA–2004–19260]

The Union Railroad (URR), a Class III switching railroad, seeks a waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) 223.13 *Requirements for existing cabooses* for nine cabooses to be used in revenue freight service. The URR is

engaged in general railroad transportation, and provides railroad switching service primarily to the steel industry. In addition to steel mills, the railroad serves the coal industry through Duquesne Wharf, a coke production facility at Clairton, Pennsylvania, and more than 30 other customers in the automotive, chemical, and aggregate business.

The URR currently consists of 65 miles of main track and approximately 200 miles of yard tracks and sidings, all located within a 10-mile radius in Allegheny County, Pennsylvania. The northernmost point is located at North Bessemer, Pennsylvania, where the railroad proceeds southward through Turtle Creek, East Pittsburgh, Monongahela Junction, Clairton Junction and Clairton.

Laminated safety glass is proposed to be used in lieu of glazing materials that meet the requirements of FRA Type I and Type II. Cabooses on the URR, which have been recently retired from service and scrapped, were operating with laminated safety glazing under a similar waiver granted in 1980 [FRA Docket Number RSGM–80–1]. There have been no reported acts of vandalism or breakage of caboose glazing caused by striking objects. Cabooses C–100, 101, 102, 103, 104, 105, 107, 108, and 109 will be operating over the same routes and schedules as the equipment covered by the previous waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–19260) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 13, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–27902 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for the Tucson Urban Corridor in Tucson, AZ

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the City of Tucson, Department of Transportation (TDOT), intend to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal by the City of Tucson to provide additional transit service to the urban core of the City of Tucson. The AA/EIS will consider the following alternatives: (1) A No-Build Alternative, consisting of improvements contained in the Pima Association of Governments (PAG) 2025 Regional Transportation Plan (RTP); (2) Transportation System Management Alternative (TSM), consisting of all reasonable cost-effective transit service improvements within the urban core short of a major investment in a New Starts project; (3) Modern Streetcar in mixed traffic; and (4) Heritage Trolley in mixed traffic. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. In addition, alternatives that are identified from the scoping process will be evaluated in the AA. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; and federal, state, and local agencies; and through public and agency meetings. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives in the Draft EIS (DEIS), a Locally Preferred Alternative (LPA) will be selected and evaluated in the Final EIS (FEIS). The FEIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No-Build Alternative.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the AA/EIS must be received no later than March 28, 2005, and must be sent to the City of Tucson at the address indicated below.

Scoping Meeting Date: A public scoping meeting will be held from 4:30 p.m. to 6:30 p.m. on Wednesday, February 26, 2005 at the Historic Depot, 400 N. Toole Ave. Oral and written comments may be given at the scoping meeting; a stenographer will record oral comments. Persons with disabilities should contact Joan Beckim (see **ADDRESSES** section below) 72 hours prior to the scoping meeting for special arrangements.

ADDRESSES: Written comments should be sent to Ms. Shellie Ginn, Tucson Urban Corridor Study Project Manager, City of Tucson, Department of Transportation, 201 N. Stone Avenue, Tucson, Arizona 85701. Email: *shellie.ginn@tucsonaz.gov.* Phone: (520) 791–4372.

To be added to the mailing list, contact Ms. Shellie Ginn at the address listed above. Please specify the mailing list of the Tucson Urban Corridor Study Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). Persons with special needs such as sign language interpretation should contact Joan Beckim, Public Involvement Coordinator, City of Tucson, 201 N. Stone Avenue, Tucson, Arizona 85701. Email: *joan@kaneenpr.com.* Phone (520) 885–9009. The dates and addresses of the scoping meetings are given in the **DATES** section above. All locations are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: To request a scoping information packet, contact Ms. Shellie Ginn, Tucson Urban Corridor Study Project Manager, City of Tucson, Department of Transportation, 201 N. Stone Avenue, Tucson, Arizona 85701. E-mail *shellie.ginn@tucsonaz.gov.* Phone: (520) 791–4372. The Federal agency contact is Mr. Hymie Luden, Office of Planning

and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 95105. Phone: (415) 744–2732.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Scope

The Federal Transit Administration (FTA), as joint lead agency with the City of Tucson, will prepare an AA/EIS on a proposal to improve transit service in an approximately five-mile long corridor in central Tucson, Arizona. The study area for the Tucson Urban Corridor Study is bounded by 22nd Street to the south; Campbell Avenue to the east; Grant Road to the north; and Grande Avenue to the west. Most of the study area is densely developed with a mixture of urban land uses and includes the University of Arizona main and medical campuses, Main Gate retail area, Fourth Avenue retail area, downtown Tucson and the emerging Rio Nuevo area. Although not a part of the formal AA/EIS process for the corridor study, results and recommendations will be coordinated with the Pima Association of Government's effort to prepare a multi-modal comprehensive transportation plan identifying opportunities for future transportation connections throughout the Tucson metropolitan area. The City of Tucson will perform conceptual engineering for transit alternatives within the Tucson Urban Corridor for the AA/DEIS that satisfies NEPA requirements. In addition, a financial plan will be developed that examines alternative funding sources.

II. Purpose and Need

The Tucson Urban Corridor area is a major employment and activity center. The study corridor continues to experience significant growth in population and jobs. The city's largest activity center, the University of Arizona, is included in the study area and attracts over 50,000 trips daily and whose master plan includes significant expansion while holding parking to a constant 2004 level. The University is a land locked urban campus whose primary mode of access in the future will need to be transit. Along with this growth, traffic congestion and capacity deficiencies are expected to increase. Roadway capacity options would be difficult given the urban nature of the area and the magnitude of historic structures and neighborhoods in the study area. Inadequate transit service has hampered access to this area and to other study area destinations. A major transit investment is recognized as a feasible alternative to providing additional capacity within this area.

The project is included in the PAG 2025 RTP as an unfunded project. Funding would be considered as part of a proposed 2006 RTP financing proposal.

III. Alternatives

Alternatives have been considered to address transportation issues in the study corridor, connecting major activity centers in the central core, including downtown Tucson, the Rio Nuevo Master Plan area, the 4th Avenue/Main Gate retail corridors, the University of Arizona, and the Arizona Health Sciences Center (AHSC).

The Tucson Urban Corridor Study will be consistent with Federal Transit Administration (FTA), Alternatives Analysis and Section 5309 New Start Program requirements for determining future federal funding in recommended programs and be consistent with the National Environmental Policy Act (NEPA). The alternatives being considered will analyze mobility needs and identify and compare the costs, benefits, and impacts of a range of transit alignment and technology alternatives. At a minimum, the following alternatives will be considered:

- No-Build.
- Transportation System Management (TSM).
- Historic Trolley.
- Modern Streetcar.

Specific alignment alternatives include, but are not limited to: (1) 2nd Street through the University of Arizona, University Boulevard, Fourth Avenue, Congress and Pennington streets in the downtown area, and Church Avenue to Granada to serve the emerging Rio Nuevo area. These alternatives will be developed further during the preparation of the AA/DEIS. Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects

The purpose of the EIS is to fully disclose the environmental consequences of building and operating a major capital investment in the Tucson Urban Corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS will explore the extent to which study alternatives and alignment options result in environmental impacts and will discuss actions to reduce or eliminate such impacts.

Environmental issues to be examined in the EIS include: Potential changes to the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, development, business and neighborhood disruptions); changes in traffic bicycle, and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic sites. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, social, economic, and financial measures, as required by current federal (NEPA) environmental laws and the implementing regulations of the Council on Environmental Quality and of FTA.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the City of Tucson, Department of Transportation, Manager as noted in the **ADDRESSES** section above.

V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of a decision by the Pima Association of Governments (PAG) to include a particular alternative in the RTP for metropolitan Tucson. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the AA/EIS. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Alternative (LPA) will be selected and evaluated in the Draft EIS. The Draft EIS will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS process will address the potential use of federal funds for the proposed action, as well as assess the social, economic, and environmental impacts of the station and alignment alternatives. Station designs and any alignment options will be refined to minimize and mitigate any adverse impacts.

After publication, the Draft EIS will be available for public and agency review and comment, and a public

hearing will be held. Based on the Draft EIS and comments received, the LPA may be refined, and the City of Tucson will further assess the LPA in the Final EIS and will apply for FTA approval to initiate Preliminary Engineering of the LPA.

Issued on: December 15, 2004.

Leslie T. Rogers,

Region IX Administrator.

[FR Doc. 04–27899 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18755; Notice 2]

Coupled Products, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Coupled Products, Inc. (Coupled Products) has determined that certain hydraulic brake hose assemblies that it produced do not comply with S5.3.4 of 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, ''Brake hoses.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Coupled Products has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Coupled Products' petition was published, with a 30 day comment period, on August 5, 2004, in the **Federal Register** (69 FR 47484). NHTSA received no comments.

S5.3.4 of FMVSS No. 106, tensile strength, requires that ''a hydraulic brake hose assembly shall withstand a pull of 325 pounds without separation of the hose from its end fittings.'' A total of approximately 24,622 brake hose assemblies, consisting of 3,092 assemblies bearing Part Number 5478 and 21,530 assemblies bearing Part Number 5480 may not comply with S5.3.4. The potentially affected hoses were manufactured using a ''straight cup'' procedure rather than the appropriate ''step cup'' procedure. Compliance testing by the petitioner of eight sample hose assemblies from two separate manufacturing lots of these hoses revealed that seven of the eight samples experienced hose separation from the end fittings at from 224 to 317 pounds.

Coupled Products believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Coupled Products stated in its petition:

> Both Part Numbers 5478 and 5480 are utilized in specific boat trailer applications of a single trailer manufacturer.* * * [T]he routing and placement of the hoses on the particular boat trailers involved, and the shielded nature of the end fittings on those trailers are such that a linear, end-to-end ''straight pull'' on the hose assembly, such as that specified in the FMVSS No. 106 tensile strength test procedure, is unlikely to occur in real-world use. Because of the manner in which these hose assemblies are installed, rather than a ''straight pull,'' it is more likely that the free length of the hose itself could be entangled or caught on a piece of road debris or other obstruction, resulting in a ''side pull'' on the assembly. With this potential in mind, [Coupled Products] conducted a side pull tensile test on a sample of the subject brake hose assemblies to simulate the possible effect of a side pull on the integrity of the assembly. This was accomplished by creating special mounting fixtures and apparatus to the standard testing equipment.* * * The ''side pull'' test results show that the tensile load achieved prior to the ends separating from the hose exceeded 530 pounds in each of the five samples tested—well in excess of the 325 pound requirement.

Coupled Products further stated:

> We believe that it is likely that in order for such a [side] pull to occur, the debris or obstacle in question would need to be of such size and/or weight that its encounter with the trailer would result in significant structural impact and thus have immediate effect on the operation of the trailer. While we have not been able to devise a test that would verify this theory, we believe that this is a realistic scenario. As a result, it seems likely that the trailer would likely incur an operational impact even before the possible loss of braking capability resulting from hose assembly failure.
>
> The axles used in the trailers in question are stationary. Unlike sliding axles that are used in some trailers, the axles used in these trailers are in a fixed location. Consequently, the possibility that the sliding movement of the axle might result in unintended pull on the hose is remote.* * *
>
> Because the braking system on the trailer is independent of the towing vehicle's braking system, any failure of the hose assembly due to excessive tensile force—unlikely as that may be—will not result in a loss of braking capability of the towing vehicle. Thus, in the unlikely event of separation, the driver would still retain full braking capability of the towing vehicle and would be able to stop the vehicle (although additional stopping distance may be required depending on the type of vehicle being used).

In support of its petition, Coupled Products stated that NHTSA has in other cases, determined that a FMVSS No. 106 noncompliance is inconsequential to safety where, ''because of the specific vehicle application involved, the hose assembly will not be subject to the type of forces specified in the standard.'' To support this assertion, Coupled Products cited two inconsequential petition grants: General Motors, 57 FR 1511 (January 14, 1992) and Mitsubishi Motors America, 57 FR 45868 (October 5, 1992). The petitioner specifically referred to the statement in these petition grants that the ''end use of the hoses was such that they were subject to pressure, not vacuum applications.''

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. The two prior inconsequentiality petition grants cited by the petitioner relate to the adhesion requirement for air brake hoses, which addresses the separation of the inner layers of the brake hose. This is distinguishable from the noncompliance in Coupled Products' hoses, which relates to the tensile strength requirement for hydraulic brake hoses, and addresses the separation of the hydraulic brake hose from the end fittings. Therefore, NHTSA's grant of the petitions cited by Coupled Products is not persuasive precedent.

The petitioner states that because of the specific vehicle application involved, (*i.e.*, the hoses are used in specific boat trailer applications of a single trailer manufacturer), the hoses are installed in such a manner as to make it unlikely that the hose assembly would be subject to the type of forces to which the tensile strength test is directed. However, this is also true of many automobile brake hose applications.

In addition, the tensile strength test is a worst case test, subjecting the crimped joint to a separation pull. The purpose of the tensile strength test is to test only the crimped area in a brake hose. A test conducted at an angle to the end fitting centerline, such as conducted by the petitioner, would not measure the strength of the crimped area by itself but also the interaction of the end fitting with the interior wall of the brake hose. This would result in a more lenient test for the crimped area.

The petitioner also asserts that because the braking system on the trailer is independent of the towing vehicle's braking system, a failure of the hose assembly on the trailer would not result in a loss of braking capability of the towing vehicle, and the driver would be able to stop both vehicles. However, in the event that the failure of the hose assembly occurred, the driver of the towing vehicle would be faced with a potentially serious safety situation due to the reduced stopping capability of the vehicle combination. In

addition, the braking imbalance can affect the stability of the towing vehicle, which can result in a loss-of-control of the vehicle combination.

The compliance testing by the petitioner resulted in seven of eight sample hose assemblies experiencing hose separation from the end fittings at from 224 to 317 pounds. This represents a noncompliance margin of from 45 percent to 2 percent, respectively, compared to the requirement of 325 pounds, over a total population of 24,622 hose assemblies. NHTSA believes that a noncompliance margin of up to 45 percent presents a serious safety concern.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, its petition is hereby denied. Coupled Products must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118 (d) and 30120(h).

Authority: (49 U.S.C. 30118(d) and 30120(h); delegations of authority at CFR 1.50 and 501.8)

Issued on: December 15, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–27832 Filed 12–20–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–398 (Sub–No. 9X)]

San Joaquin Valley Railroad Company—Discontinuance Exemption—in Kern County, CA

[STB Docket No. AB–170 (Sub-No. 1X)]

Sunset Railway Company—Abandonment Exemption—in Kern County, CA

Sunset Railway Company (SRY) and San Joaquin Valley Railroad Company (SJVR) (collectively, applicants) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service*[1] for SRY to abandon and for SJVR to discontinue service over a 16.3-mile line of railroad, known as the Sunset Subdivision, extending between west of Levee, milepost 20.0, and Taft, milepost 36.3, in Kern County, CA. The line traverses United States Postal Service Zip Code 93268.

SRY and SJVR have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line in over 2 years and any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 20, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 30, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 10, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: Attorney for SRY—Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606; Attorneys for SJVR—Gary A. Laakso, Esq., Vice President Regulatory Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicants have filed environmental and historic reports which address the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 23, 2004.

Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SJVR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SJVR's filing of a notice of

[1] The verified notice of exemption was received by the Board on November 19, 2004, but was not docketed as filed until November 24, 2004, when the filing fee for SRY was received. Applicants did not include a consummation date in the notice. However, by letter filed on November 30, 2004, applicants indicated a consummation date of January 13, 2005. By letter filed on December 1, 2004, applicants requested to amend the notice to change the length of the line from 18.0 miles to 16.3 miles, extending between west of Levee, milepost 20.0, and Taft, milepost 36.3, in Kern County, CA. Upon consultation with applicants, December 1, 2004 is used as the actual filing date. Applicants also indicated a new consummation date of January 19, 2005. Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The amended notice was filed on December 1, 2004. Therefore, the earliest possible date consummation date is January 20, 2005. By letter filed on December 13, 2004, applicants confirmed that the consummation date should be January 20, 2005. Applicants also indicated that, upon further review of their records and communication from Baker Petrolite Corporation (BPC), they have determined that BPC was an active shipper located at milepost 18.99, and have reduced the scope of the abandonment and discontinuance so as to continue to serve BPC. Applicants stated that, as per a December 1, 2004 conversation with BPC, the reduction in the scope of abandonment and discontinuance resolved BPC's concerns.

[2] In the December 13, 2004 letter, applicants certified that the certification contained in their verified notice of exemption filed on November 19, 2004, remains correct and accurate for the rail line between milepost 20.0 and milepost 36.3.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

consummation by December 21, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 14, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27857 Filed 12–20–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34632]

The Ohio and Pennsylvania Railroad—Acquisition and Operation Exemption—Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA

The Ohio and Pennsylvania Railroad (O&P), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by lease) approximately 36 miles of rail line owned by the Columbiana County Port Authority (CCPA), between milepost 0.0 at or near Youngstown, OH, and milepost 35.7 at or near Darlington, PA.

The Central Columbiana and Pennsylvania Railway Company (CCPR) currently serves as the line's operator pursuant to a track lease and operating agreement with CCPA. On June 14, 2004, CCPR filed for bankruptcy protection before the U.S. Bankruptcy Court for the Eastern District of Arkansas, Little Rock Division (Case No. 4:04–bk–16887 M, Chapter 11) (bankruptcy court). Pursuant to an agreement between CCPA, O&P, and the bankruptcy trustee for CCPR, O&P will acquire and operate the line by assuming CCPR's rights, duties, and obligations under CCPR's track lease and operating agreement with CCPA (including CCPR's option to purchase the line in March 2006). The agreement is pending final approval from the bankruptcy court, which O&P expects will be granted before December 31, 2004.[1]

The transaction is scheduled to be consummated on or after December 15, 2004. O&P certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

This transaction is related to STB Docket No. AB–556 (Sub–No. 2X), *Railroad Ventures, Inc.—Abanondment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA,* which involves the purchase of the line by CCPA pursuant to the offer of financial assistance provisions of 49 U.S.C. 10904 and 49 CFR 1152.27.

If this 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. 34632, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 14, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27858 Filed 12–20–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34618]

East Penn Railway, Inc.—Modified Rail Certificate

On November 22, 2004, East Penn Railway, Inc. (East Penn), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate a portion of a rail line known as the Octoraro Branch (also referred to as Line 142), extending for approximately 27.51 miles between milepost 26.98 at Chadds Ford Junction, PA, and milepost 54.49 at the Pennsylvania/Maryland state line near Sylmar, MD.

The Octoraro Branch was previously owned by the Penn Central Transportation Company (Penn Central), and is currently owned by the Southeastern Pennsylvania Transportation Authority (SEPTA). The Octoraro Branch was not included in the final system plan at the time the Consolidated Rail Corporation was formed and, as such, was authorized to be abandoned without further regulatory approval pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law No. 94–210. SEPTA acquired the Octoraro Branch from the trustees of Penn Central after it was abandoned in 1976.

East Penn states that, until recently, the line was operated by the Morristown & Erie Railway, Inc. (M&E), under an interim operating agreement that terminated on November 19, 2004, and that it proposes to replace M&E as the interim operator. *See Morristown & Erie Railway, Inc.—Modified Rail Certificate*, STB Finance Docket No. 34369 (STB served July 24, 2003). On November 18, 2004, SEPTA and East Penn entered into an interim license agreement commencing on November 19, 2004. Under the operating agreement, East Penn will provide rail service over the Octoraro Branch from November 22, 2004, through approximately December 19, 2004, after which, East Penn plans to purchase the Octoraro Branch from SEPTA. The interim operating agreement will terminate at the transfer of ownership to East Penn.

East Penn will initially provide rail service on an as-needed basis, and will expand service as customers and traffic increases. East Penn states that the Octoraro Branch will connect with ISG Railways, Inc. (ISG), at Chadds Ford Junction, PA, in order to connect with Norfolk Southern Railway Company (NS) at Coatesville, PA. ISG's rail line also connects with the former Reading Railroad's Wilmington & Northern line at the Delaware/Pennsylvania state line, providing East Penn access to both NS and CSX Transportation, Inc., at Wilmington, DE.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

East Penn indicates that: (1) There are no subsidizers; (2) there are no preconditions for shippers to meet to receive rail service; and (3) it has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of

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[1] To ensure the continued availability of rail service to shippers on the line, the bankruptcy court, by a December 3, 2004 order, has approved an interim agreement between O&P and CCPR's bankruptcy trustee, which would allow O&P to assume immediate operational control of the line.

American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27859 Filed 12–20–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879

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 8879, IRS e-file Signature Authorization.

DATES: Written comments should be received on or before February 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Joe Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms 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: IRS e-file Signature Authorization.

OMB Number: 1545–1758.

Form Number: 8879.

Abstract: Form 8879 is used to allow taxpayers to authorize the Electronic Return Originators to enter the taxpayer's PIN on the electronically filed tax returns.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 8,000,000.

Estimated Time Per Respondent: 45 min.

Estimated Total Annual Burden Hours: 6,000,000.

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: December 14, 2004.

Joe Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–27914 Filed 12–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–56

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 Revenue Procedure 2001–56, Demonstration Automobile Use.

DATES: Written comments should be received on or before February 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Joe Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to 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: Demonstration Automobile Use.

OMB Number: 1545–1756.

Revenue Procedure Number: Revenue Procedure 2001–56.

Abstract: Revenue Procedure 2001–56 provides optional simplified methods for determining the value of the use of demonstration automobiles provided to employees by automobile dealerships.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100,000.

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: December 13, 2004.

Joe Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–27915 Filed 12–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8858 and Schedule M

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 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities, and Schedule M, Transaction Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer on Other Related Entities.

DATES: Written comments should be received on or before February 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (Form 8858), and Transaction Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer on Other Related Entities (Schedule M).

OMB Number: 1545–1910.

Form Number: Form 8858 and Schedule M.

Abstract: Form 8858 and Schedule M are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively.

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 individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 36 hours, 39 minutes.

Estimated Total Annual Burden Hours: 1,832,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–27916 Filed 12–20–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
December 21, 2004

Part II

Department of Defense

Department of the Army

32 CFR Part 634

Motor Vehicle Traffic Supervision; Proposed Rule

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: Proposed rule; request for comments.

SUMMARY: The Department of the Army proposes to revise its regulation 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: Comments submitted to the address below on or before February 22, 2005 will be considered.

ADDRESSES: You may submit comments, identified by ''32 CFR Part 634 and RIN 0702–AA43'' in the subject line, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: nathan.evans3@us.army.mil.* Include 32 CFR part 634 and RIN 0702–AA43 in the subject line of the message.
- *Mail:* 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

This rule was previously published. The Administrative Procedure Act, as amended by the Freedom of Information Act requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this regulation fall into that category.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule is not a significant regulatory action. As such, the proposed 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 proposed 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 proposed 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 proposes to revise 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.

§ 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.

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 or 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 inst allation 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 in 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 polices (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 or 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 ½″) 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) *Headphones and earphones.* The wearing of headphones or earphones is prohibited while driving a U.S. Government vehicle, POV, motorcycle, or other self-propelled two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine. This does not negate the requirement for wearing hearing protection when conditions or good judgment dictate use of such protection.

(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 use 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 5–1 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 courts-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, N.W., 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, N.E., Glen Burnie, MD 21062, (301) 768–7000.

Massachusetts: Registry of Motor Vehicles, 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, N.E., 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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Part III

Department of Labor

Employee Benefits Security Administration

Publication of Year 2004 Form M–1 With Electronic Filing Option; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Year 2004 Form M–1 With Electronic Filing Option

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice on the availability of the Year 2004 Form M–1 with Electronic Filing Option.

SUMMARY: This document announces the availability of the Year 2004 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. A copy of this new form is attached. It is substantively identical to the 2003 Form M–1. The Form M–1 may again be filed electronically over the Internet.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the Form M–1 filing requirement, contact Amy J. Turner or Kevin Horahan, Office of Health Plan Standards and Compliance Assistance, at (202) 693–8335. For inquiries regarding electronic filing capability, contact the EBSA computer help desk at (202) 693–8600. Questions on completing the form are being directed to the EBSA Form M–1 help desk at (202) 693–8360.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2004 Form M–1

This document announces the availability of the Year 2004 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). A copy of the new form is attached.

This year's Form M–1 is substantively identical to the Year 2003 Form M–1. Additionally, the electronic filing option has been retained and filers are encouraged to use this method. The Year 2004 Form M–1 is due March 1, 2005, with an extension until May 1, 2005 available.

The Employee Benefits Security Administration (EBSA) is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M–1 are available on the Internet at *http://www.dol.gov/ebsa.* In addition, after printing, copies will be available by calling the EBSA toll-free publication hotline at 1–866–444–EBSA (3272). Questions on completing the form are being directed to the EBSA help desk at (202) 693–8360.

Statutory Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1132, 1134, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, 1191a–c; Secretary of Labor's Order No. 1–2003, 68 FR 5374 (February 2, 2003).

Signed at Washington, DC this 13th day of December, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

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Form M-1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

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Form M-1
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Greater Accuracy
- Electronic-filing data is checked for errors to improve accuracy
- Built-in error checks mean fewer corrections and faster processing of your return

Increased Security
- Encryption of submitted data assures a high level of security
- Assigned Personal Identification Numbers (PINs) and secure filing Web site provide protected and secure access
- Direct processing reduces the manual handling of your return

Automated
- Web site submission occurs immediately
- Eliminate postage expenses

Participation is easy!
- For information on Form M-1 electronic filing, please visit www.askebsa.dol.gov/mewa

If you have additional questions about the Form M-1 filing requirement or the ERISA health coverage requirements, there's help for you.

Form M-1 Filing Requirement

(1) For questions on completing the Form M-1, contact the Employee Benefits Security Administration's (EBSA's) Form M-1 help desk at **202-693-8360**.

(2) For inquiries regarding electronic filing capability, contact the EBSA computer help desk at 202-693-8600.

(3) For inquiries regarding the Form M-1 filing requirement, contact the Office of Health Plan Standards and Compliance Assistance at **202-693-8335.**

ERISA Health Coverage Requirements

(1) For questions about ERISA's health coverage requirements, contact EBSA by calling toll-free 1-866-444-EBSA (3272) or electronically at **www.askebsa.dol.gov.**

(2) EBSA's Health Benefits Education Campaign offers compliance assistance seminars across the country addressing a wide variety of health care issues, including HIPAA, COBRA, and the benefit claims procedure regulation. For information on upcoming compliance assistance seminars, go to **www.dol.gov/ebsa/hbec.html.**

The Department of Labor's EBSA has many helpful compliance assistance publications on ERISA's health benefits requirements, including:

- *MEWAs (Multiple Employer Welfare Arrangements): A Guide to Federal and State Regulation*
- *Compliance Assistance Guide: Recent Changes in Health Care Law*
- *Compliance Assistance for Group Health Plans: HIPAA and Other Recent Health Care Laws*
- *New Health Laws Notice Guide*
- *Self-Compliance Tool for Part 7 of ERISA: HIPAA and Other Health Care-Related Laws (included as an attachment to this document)*
- *Your Rights After a Mastectomy . . . Women's Health and Cancer Rights Act of 1998*
- *Health Benefits Under the Consolidated Omnibus Budget Reconciliation Act (COBRA)*
- *Compliance Assistance for Group Health and Disability Plans - The Benefit Claims Procedure Regulation*

EBSA also has many publications to assist participants and beneficiaries. EBSA's publications are available on the Internet at **www.dol.gov/ebsa** or by calling toll-free **1-866-444-EBSA (3272).**

2004 Form M-1

MEWA/ECE Form

This Form is Open to Public Inspection

Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

This report is required to be filed under section 101(g) of the Employee Retirement Income Security Act of 1974 and 29 CFR 2520.101-2.
→ See separate instructions before completing this form.

OMB No. 1210-0116

Department of Labor
Employee Benefits
Security Administration

PART I REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B** (as applicable) and Item **C**.

A If this is an annual report, specify whether it is for:
(*1*) ❑ The 2004 calendar year; or
(*2*) ❑ The fiscal year beginning _____ and ending _____ .
mm/dd/yyyy mm/dd/yyyy

B If this is a special filing, specify whether it is:
(*1*) ❑ A 90-day origination report;
(*2*) ❑ An amended report; or
(*3*) ❑ A request for an extension.

C If this is a final report, check here . . . . . → ❑

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE
	1c Employer Identification Number (EIN)
	1d Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator
	2c EIN
	2d E-mail address of the administrator
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor
	3c EIN

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated . . . . . → _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity provides coverage.	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no" to **5b**, is the entity fully insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	

For Paperwork Reduction Act Notice, see page 8 of the instructions.

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE . . . . . → _____

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I (Part 7) of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State or Federal litigation or enforcement proceeding (including any administrative proceeding), whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) . . . . . → ☐ Yes ☐ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include (if applicable): (1) the case number, (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the name of the MEWA or ECE, the disposition of the case, and the phrase "Item 8b Attachment," noted in the upper right corner.

9 Complete the following. (Note: The instructions to this form contain a Self-Compliance Tool which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a Is the coverage provided by the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department of Labor's (Department's) regulations issued thereunder? (See Part I of the Self-Compliance Tool) . . . . . →	☐ Yes ☐ No ☐ N/A
9b Is the coverage provided by the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Part II of the Self-Compliance Tool) . . . . . →	☐ Yes ☐ No ☐ N/A
9c Is the coverage provided by the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Part III of the Self-Compliance Tool) . . . . . →	☐ Yes ☐ No ☐ N/A
9d Is the coverage provided by the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Part IV of the Self-Compliance Tool) . . . . . →	☐ Yes ☐ No ☐ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, YOU MAY ATTACH ADDITIONAL PAGES. (SEE INSTRUCTIONS SECTION 2.4)

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true and correct. Under penalty of perjury and other penalties set forth in the instructions, I also declare that, unless this is an extension request, this report is complete.

Signature of administrator → _____ Date → _____

Type or print name of administrator → _____

Department of Labor
Employee Benefits Security Administration

Year 2004
Instructions for Form M-1

Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

ERISA refers to the Employee Retirement Income Security Act of 1974, as amended

Notes on the 2004 Form M-1

- This year's Form M-1 is substantively identical to the 2003 Form M-1.
- The year 2004 Form M-1 is generally due March 1, 2005, with an extension until May 1, 2005, available.

Introduction

This form is required to be filed under sections 101(g) and 734 of ERISA and 29 CFR 2520.101-2.

The Department of Labor, EBSA, is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M-1 are available by calling the **EBSA toll-free hotline at 1-866-444-3272** and on the Internet at: **www.dol.gov/ebsa.** If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the **EBSA Form M-1 help desk at (202) 693-8360.**

All Form M-1 reports are subject to a computerized review. It is in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

Contents

The instructions are divided into three main sections.

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SECTION 1

1.1 Definitions

"Administrator"
For purposes of this report, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the "plan sponsor" is the administrator. ("Plan sponsor" is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer; (ii) the employee organization in the case of a plan established or maintained by an employee organization; or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.) Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

"Employer Identification Number" or "EIN"
An EIN is a nine-digit employer identification number (for example, 00-1234567) that has been assigned by the IRS. Entities that do not have an EIN should apply for one on Form SS-4, Application for Employer Identification Number as soon as possible. You can obtain Form SS-4 by calling **1-800-829-4933** or at the IRS Web site at **www.irs.gov.** EBSA does NOT issue EINs.

"Entity Claiming Exception" or "ECE"
For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining agreements (see section 3(40)(A)(i) of ERISA and 29 CFR 2510.3-40 of the Department's regulations.)

The administrator of an ECE must file this report each year for the first 3 years after the ECE is "originated." (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated" more filings are triggered.)

"Employee Welfare Benefit Plan"
In general, an employee welfare benefit plan means any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent such plan, fund, or program provides its participants or beneficiaries the benefits listed in section 3(1) of ERISA (including benefits for medical care).

"Excepted Benefits"
Part 7 of Subtitle B of Title I (Part 7) of ERISA does not apply to any group health plan or group health insurance issuer in relation to its provision of excepted benefits.

Certain benefits that are generally not health coverage are excepted in all circumstances. These benefits are: coverage only for accident (including accidental death and dismemberment), disability income insurance, liability insurance (including general liability insurance and automobile liability insurance), coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, credit-only insurance (for example, mortgage insurance), and coverage for on-site medical clinics.

Other benefits that generally are health coverage are excepted if certain conditions are met. Specifically, limited scope dental benefits, limited scope vision benefits, and long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the group health plan. For more information on these limited excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(3).

In addition, noncoordinated benefits may be excepted benefits. The term "noncoordinated benefits" refers to coverage for a specified disease or illness (such as cancer-only coverage) or hospital indemnity or other fixed dollar indemnity insurance (such as insurance that pays $100/day for a hospital stay as its only insurance benefit), if three conditions are met. First, the benefits must be provided under a separate policy, certificate, or contract of insurance. Second, there can be no coordination between the provision of these benefits and an exclusion of benefits under a group health plan maintained by the same plan sponsor. Third, benefits must be paid without regard to whether benefits are provided with respect to the same event under a group health plan maintained by the same plan sponsor. For more information on these noncoordinated excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(4).

Finally, supplemental benefits may be excepted if certain conditions are met. Specifically, the benefits are excepted only if they are provided under a separate policy, certificate or contract of insurance, and the benefits are medicare supplemental (commonly known as "Medigap" or "MedSupp") policies, TRICARE supplements, or supplements to certain employer group health plans. Such supplemental coverage cannot duplicate primary coverage and must be specifically designed to fill gaps in primary coverage, coinsurance, or deductibles.

Note that retiree coverage under a group health plan that coordinates with Medicare may serve a supplemental function similar to that of a Medigap policy. However, such employer-provided retiree "wrap around" benefits are not excepted benefits (because they are expressly excluded from the definition of a Medicare supplemental policy in section 1882(g)(1) of the Social Security Act). For more information on supplemental excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(5).

"Group Health Plan"
In general, a group health plan means an employee welfare benefit plan to the extent that the plan provides benefits for medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. See ERISA section 733(a).

"Health Insurance Issuer" or "Issuer"
The term "health insurance issuer" or "issuer" is defined, in pertinent part, in §2590.701-2 of the Department's regulations as "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan."

"Multiple Employer Welfare Arrangement" or "MEWA"
In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40) and 29 CFR 2510.3-40 of the Department's regulations. (Note: Many States regulate entities as MEWAs using their own State definition of the term. Whether or not an entity meets a State's definition of a MEWA for purposes of regulation under State law is a matter of State law.)

For more information on MEWAs, visit EBSA's Web site at **www.dol.gov/ebsa** or call the **EBSA toll-free hotline** at **1-866-444-3272** and ask for the booklet entitled, *MEWAs: Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation.*

For information on State MEWA regulation, contact your State Insurance Department.

"Originated"
For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the merger were last originated at least 3 years prior to the merger); or

(3) The number of employees to which the MEWA or ECE provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least 3 years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once.

"Plan Number" or "PN"
A PN is a three-digit number assigned to a plan or other entity by an employer or plan administrator. For plans or other entities providing welfare benefits, the first plan number should be number 501 and additional plans should be numbered consecutively. For MEWAs and ECEs that file a Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500), the same PN should be used for the Form M-1. (For more information on the Form 5500 you can access **www.efast.dol.gov** or call toll-free at **1-866-463-3278**.)

"Sponsor"
For purposes of this report, the "sponsor" means:

(1) If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer; (ii) the employee organization in the case of a plan established or maintained by an employee organization; or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan; or

(2) If the MEWA or ECE is not a group health plan, the sponsor is the entity that establishes or maintains the MEWA or ECE.

1.2 Who Must File

General Rules
The administrator of a MEWA generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an ECE must file the report if the ECE was last originated at any time within 3 years before the annual filing due date. (See the definition of "originated" in Section 1.1 and the discussion of When to File in Section 1.3.) **(Caution:** An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Exceptions

(1) Irrespective of the general rules (described above), in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE meets any of the following conditions:

(i) It is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees (or to their beneficiaries).

(ii) It provides coverage that consists solely of excepted benefits (defined above), which are not subject to Part 7 of ERISA. (However, if the MEWA or ECE provides coverage that consists both of excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to file the Form M-1.)

(iii) It is a group health plan that is not subject to ERISA, including a governmental plan, church plan, or plan maintained only for the purpose of complying with workers' compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively.

(iv) It provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, and plans maintained only for the purpose of complying with workers' compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not subject to ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage).

(2) In addition, in no event is reporting required by the administrator of an entity that would not constitute a MEWA or ECE but for the following circumstances:

(i) It provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles applied under section 414(b) or (c) of the Internal Revenue Code.

(ii) It provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M-1 filing and is temporary in nature (*i.e.*, it does not extend beyond the end of the plan year following the plan year in which the change in control occurs).

(iii) It provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as nonemployee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, in the case of a 90-day origination report, determined as of the 60th day following the origination date.

1.3 When to File

General Rule

The Form M-1 must be filed no later than March 1 following any calendar year for which a filing is required (unless March 1 is a Saturday, Sunday, or Federal holiday, in which case the form must be filed no later than the next business day).

90-Day Origination Report

In general, an expedited filing is also required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or Federal holiday, in which case the form must be filed no later than the next business day).

Exception to the 90-Day Origination Report Requirement

No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions of Time

A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must: (1) complete Parts I and II of the Form M-1 (and check Box B(3) in Part I); (2) sign, date, and type or print the administrator's name at the end of the form; and (3) file this request for extension no later than the normal due date for the Form M-1. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of this request for extension must be attached to the completed Form M-1 when filed.

1.4 How to File

The 2004 Form M-1 can be filed electronically with the Department of Labor by going to **www.askebsa.dol.gov/mewa**.

In addition, completed paper copies of the Form M-1 can be sent to:

Public Documents Room, EBSA
Room N-1513, U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

1.5 Penalties

ERISA provides for a civil penalty for failure to file a Form M-1, failure to file a completed Form M-1, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,100 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report (or a higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996). In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported

General Rule
The administrator of a MEWA or ECE that is required to file must complete the Form M-1 using the previous calendar year's information. (For example, for a filing due by March 1, 2005, calendar year 2004 information should be used.)

Fiscal Year Exception
The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least 6 continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by March 1, 2005, fiscal year 2004 information may be used if the administrator has at least 6 continuous months of fiscal year 2004 information to report.) In this case, the administrator should check Box A(2) in Part I and specify the fiscal year.

2.2 90-Day Origination Report

When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See Section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there is an exception to the 90-Day Origination Report requirement. No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date

For paper filings, the administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

If filing online, the administrator must safeguard the EBSA-assigned Personal Identification Number (PIN) and acknowledge the online certification that the online filer is the administrator authorized to submit the filing on behalf of the MEWA or ECE. This electronic acknowledgement will bind the administrator to the information submitted on the electronic filing in lieu of an original signature.

2.4 Attaching Additional Pages

For paper filings, if more space is needed to complete any item on the Form M-1, additional pages may be attached. Additional pages must be the same size as this form (8 1/2" x 11") and should include the name of the MEWA or ECE, the Item number, and the word "Attachment" in the upper right corner. In addition, the attachment for any item should be in a format similar to that item on the form.

If filing online, these additional pages may be uploaded online at the Web filing site.

2.5 Amended Report

For paper filings, to correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, Box B(2) checked and an original signature. When filing an amended report on paper, answer all questions and circle the amended line numbers.

Online filers may file an amended report by selecting *New Filing* at the Web filing site and selecting Item B(2) "An amended report."

SECTION 3

Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions

Part I - Report Identification Information
Complete either Item A or Item B, as applicable.

Annual Reports: If this is an annual report, check either box A(1) or box A(2).

Box A(1): Check this box if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)

Box A(2): Check this box if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 2004 information is being used instead of calendar year 2004 information, specify the dates the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Special Filings: If this is a special filing, check either box B(1), box B(2), or box B(3).

Box B(1): Check this box if the filing is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Report.)

Box B(2): Check this box if the filing is an Amended Report. (See Section 2.5 on Amended Reports.)

Box B(3): Check this box if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Final Reports: Check the box in Item C if the administrator does not intend to file a Form M-1 next year. For example, if this is the third filing following an origination for an ECE, or if a MEWA has ceased operations, the administrator must check this box.

Part II - MEWA or ECE Identification Information

Items 1a through 1d: Enter the name, address, and

telephone number of the MEWA or ECE, and any EIN and PN used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave Item 1c blank. If the MEWA or ECE does not have any PNs associated with it, leave Item 1d blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not those used by group health plans or employers that purchase coverage through the MEWA or ECE. For more information on EINs or PNs see Section 1.1 on Definitions.

Items 2a through 2d: Enter the name, address, telephone number, and email address of the administrator of the MEWA or ECE, and the EIN used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself. Inclusion of an email address allows the Department of Labor to contact the administrator in the event problems arise, particularly with an electronic filing. For more information on the definition of "administrator," and on EINs, see Section 1.1 on Definitions.

Items 3a through 3c: Enter the name, address, and telephone number of the entity sponsoring the MEWA or ECE, and any EIN used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "sponsor," and on EINs, see Section 1.1 on Definitions. If there is no such entity, leave Item 3 blank and skip to Item 4.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, see the definition of "originated" in Section 1.1.

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.) When completing the chart, complete Item 5a first. Then for each row, complete Item 5b through Item 5g as it applies to the State listed in Item 5a.

Item 5a. Enter all States in which the MEWA or ECE provides benefits for medical coverage. For this purpose, list the State(s) where the employers (of the employees receiving coverage) are domiciled. In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands. Enter one State per row.

Item 5b. For each State listed in Item 5a, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in the State listed in that row. (For a definition of the term "health insurance issuer," see Section 1.1.) For more information on whether an entity that is a licensed or registered MEWA in a State meets the definition of a health insurance issuer in that State, contact the State Insurance Department.

Item 5c. For each "yes" answer in Item 5b, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. For each "no" answer in Item 5b, specify whether the MEWA or ECE is fully insured through one or more health insurance issuers in each State.

Item 5e. For each "yes" answer in Item 5d, enter the name of the insurer and its NAIC number (if available). If there is more than one insurer, enter all insurers and their NAIC numbers (if available).

Item 5f. In each State listed in Item 5a, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance and excess loss insurance.

Item 5g. For each "yes" answer in Item 5f, enter the name of the stop-loss insurer and its NAIC number (if available). If there is more than one stop-loss insurer, enter all stop-loss insurers and their NAIC numbers (if available).

Item 6: Of the States identified in Item 5a, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 participants in the MEWA receive coverage through these two employers. Three employers are located in State Y and 30 participants in the MEWA receive coverage through these three employers. Finally, one employer is located in State Z and 200 participants in the MEWA receive coverage through this employer. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23 1/3 percent of its business in State X (70/300 = 23 1/3 percent) and 66 2/3 percent of its business in State Z (200/300 = 66 2/3 percent). However, the administrator should not specify State Y because the MEWA conducts only 10 percent of its business in State Y (30/300 = 10 percent).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants covered under the MEWA or ECE. For more information on

determining the number of participants, see the Department of Labor's regulations at 29 CFR 2510.3-3(d).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of Subtitle B of Title I (Part 7) of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997, at 62 FR 67687. Additional interim final regulations and proposed regulations on HIPAA's nondiscrimination provisions were published in the Federal Register on January 8, 2001, at 66 FR 1378. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997, at 62 FR 66931. The Working Families Tax Relief Act of 2004 extended the MHPA sunset date to December 31, 2005. See Pub. L. No. 108-311. Also, regulations implementing the substantive provisions of the Newborns' Act were published in the Federal Register on October 27, 1998, at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department of Labor's summary plan description content regulations at 2520.102-3(u). Finally, the Department of Labor has published two sets of informal, question-and-answer guidance on WHCRA. These sets of question-and-answer guidance are available on the Department's Web site at **www.dol.gov/ebsa** and from **EBSA's toll-free hotline at 1-866-444-3272.**

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if a MEWA or ECE is neither a group health plan nor a health insurance issuer, if the MEWA or ECE offers or provides benefits for medical care through one or more group health plans, the coverage is required to comply with Part 7 of ERISA and the MEWA or ECE is required to complete Items 8a through 9d.

Relation to Other Laws: States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to that State's Insurance Department.

For More Information: EBSA has published four compliance assistance publications on these recent health care laws. The first, "Compliance Assistance Guide: Recent Changes in Health Care Law," includes comprehensive information on HIPAA, MHPA, the Newborns' Act, and WHCRA. The second, "Compliance Assistance for Group Health Plans: HIPAA and Other Recent Health Care Laws" provides key compliance considerations for group health plans. The third, the "New Health Laws Notice Guide" summarizes the new health law notice requirements and includes sample language. The fourth, *Self-Compliance Tool for Part 7 of ERISA: HIPAA and other Health Care-Related Provisions* (Self-Compliance Tool) assists health plans and issuers in assessing their compliance line by line with the health laws and is also attached to the Form M-1. You may obtain all of these publications, or speak to a benefits advisor about these laws, by calling the **EBSA toll-free hotline at 1-866-444-3272.** These booklets are also available on the Internet at: **www.dol.gov/ebsa.**

Items 8a and 8b: With respect to Item 8a, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under Item 8a, identify, in Item 8b, any such litigation or enforcement proceeding.

Item 9a: The HIPAA portability requirements added sections 701, 702, and 703 of ERISA.

General Applicability. In general, you must answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and §2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and §2590.732(a) of the Department's regulations).

Self-Compliance Tool. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Part I of the Self-Compliance Tool may be helpful.

Item 9b: MHPA added section 712 of ERISA.

General Applicability. In general, you must answer "yes"

or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small group health plan (as described in section 732(a) of ERISA and §2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and §2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide both medical/surgical benefits and mental health benefits.

(4) The MEWA or ECE offers or provides coverage only to small employers (as described in the small employer exemption contained in section 712(c)(1) of ERISA and §2590.712(e) of the Department's regulations).

(5) The coverage has satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and §2590.712(f) of the Department's regulations).

Self-Compliance Tool. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Part II of the Self-Compliance Tool may be helpful.

Item 9c: The Newborns' Act added section 711 of ERISA.

General Applicability. In general, you must answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE does not provide benefits for hospital lengths of stay in connection with childbirth.

(2) The MEWA or ECE is subject to State law regulating such coverage, instead of the Federal Newborns' Act requirements, in all States identified in Item 5a, in accordance with section 711(f) of ERISA and §2590.711(e) of the Department's regulations.

Self-Compliance Tool. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Part III of the Self-Compliance Tool may be helpful.

Item 9d: WHCRA added section 713 of ERISA.

General Applicability. In general, you must answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and §2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and §2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide medical/surgical benefits with respect to a mastectomy.

Self-Compliance Tool. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Part IV of the Self-Compliance Tool may be helpful.

3.2 Self-Compliance Tool

A Self-Compliance Tool, which may be used to help assess an entity's compliance with Part 7 of ERISA, is included on the following pages of these instructions. This tool may also be helpful in answering Items 9a through 9d of the Form M-1.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form: 2 hrs.

Preparing the form: 50 min. - 1 hr. and 35 min.

Self-Compliance Tool for Part 7 of ERISA: HIPAA and Other Health Care-Related Provisions

INTRODUCTION

This checklist is a useful self-compliance tool for group health plans, plan sponsors, plan administrators, health insurance issuers, and other parties to determine whether a group health plan is in compliance with the provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974 (ERISA). The Part 7 provisions were added to ERISA by four separate laws: the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Mental Health Parity Act of 1996 (MHPA); the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act); and the Women's Health and Cancer Rights Act of 1998 (WHCRA). ERISA is administered by the Employee Benefits Security Administration (EBSA).

All of the foregoing laws amended Part 7 of ERISA by adding new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Part A of Title XXVII of the Public Health Service Act (PHS Act).

Arrangements Subject to Part 7 of ERISA: In general, Part 7 of ERISA applies to group health plans and health insurance issuers in the group market.

- A group health plan means an employee welfare benefit plan to the extent that the plan provides medical care (including items and services paid for as medical care) to employees (including partners in a partnership) or their dependents (defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.
- A health insurance issuer or issuer means an insurance company, insurance service, or insurance organization (including a health maintenance organization (HMO)) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance.
- Group market generally means the market for health insurance coverage offered in connection with a group health plan.
  - Even though issuers in the group market are subject to Part 7, the Department of Labor cannot enforce against them. However, participants may bring a cause of action against an issuer for violations of Part 7.
  - States can enforce against issuers for violations of these new health care laws. Therefore, questions concerning issuers or suspected violations by issuers should be referred to the applicable State insurance department.

Arrangements Not Subject to Part 7 of ERISA: Certain arrangements that are group health plans are not subject to Part 7. These arrangements are listed below.

- Very Small Group Health Plans are generally not subject to Part 7 (except very small group health plans are subject to section 711 of ERISA, the Newborns' Act provisions). A very small group health plan is a group health plan that has fewer than two participants who are current employees on the first day of the plan year.

- Group health plans are not subject to Part 7 of ERISA in their provision of "excepted benefits." There are several types of "excepted benefits."
  - Certain benefits are always treated as "excepted benefits" because they are **not considered health coverage**, such as accident-only or disability income insurance and workers' compensation insurance.
  - Other benefits are treated as "excepted benefits" if they are **offered separately or are not an integral part of the plan**, including limited-scope dental or vision benefits or long-term care benefits.
  - Moreover, other benefits are treated as "excepted benefits" if they are **offered separately and not coordinated** with benefits under another group health plan, including coverage for a specific disease, and hospital indemnity or other fixed indemnity insurance.
  - Finally, other benefits are treated as "excepted benefits" if they are **offered separately and supplemental** to Medicare, Armed Forces health care coverage, or group health plan coverage.
- Church Plans are not subject to Part 7 because they are not subject to Title I of ERISA. (However, they are generally subject to parallel provisions in the Code. Questions concerning these plans should be referred to the Internal Revenue Service (IRS).)
- Governmental Plans are not subject to Part 7 because they are not subject to Title I of ERISA. (However, nonfederal governmental plans may be subject to parallel provisions in the PHS Act. Questions concerning these plans should be referred to the Department of Health and Human Services (HHS).)

Preemption: Part 7 of ERISA contains new preemption and applicability rules for group health plans and health insurance issuers.

(1) Group Health Plans. In general, section 514 of ERISA continues to apply with respect to group health plans.

(2) Group Health Insurance Issuers.

- With respect to the requirements of section 701 of ERISA, State laws regarding issuers cannot "differ" from the requirements of ERISA section 701, except as listed below:
  - State law may shorten the 6-month "look-back" period prior to the enrollment date to determine what is a preexisting condition;
  - State law may shorten the 12-month (18-month for late enrollees) maximum preexisting condition exclusion period;
  - State law may lengthen the 63-day significant-break-in-coverage period;
  - State law may lengthen the 30-day special enrollment period for newborns, adopted children, and children placed for adoption to enroll in the plan without a preexisting condition exclusion period;
  - State law may expand the prohibitions on conditions and individuals to whom a preexisting condition exclusion period may not be applied beyond the exceptions for newborns, adopted children, and children placed for adoption enrolled within 30 days of birth, adoption and placement for adoption, and pregnancy;
  - State law may require additional special enrollment periods; and
  - State law may reduce the maximum HMO affiliation period to less than 2 months (3 months for late enrollees).
- With respect to all other HIPAA provisions and the MHPA provisions, State laws relating to health insurance issuers continue to apply, except to the extent that the State law "prevents the application of a requirement of" these HIPAA and MHPA provisions.
- With respect to the WHCRA provisions, State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage of reconstructive breast surgery that is required by WHCRA.

(3) Special Applicability Rule. The Newborns' Act contains a special applicability rule. This applicability rule is explained on page 19 of this checklist.

Cumulative List of Checklist Questions for HIPAA and Other Health Care-Related Statutes Added to Part 7 of ERISA

I. Determining Compliance with the HIPAA Provisions in Part 7 of ERISA

If you answer "No" to any of the questions below, the group health plan is in violation of the HIPAA provisions in Part 7 of ERISA.

	YES	NO	N/A
SECTION A — Limits on Preexisting Condition Exclusions If the plan imposes a preexisting condition exclusion period, the plan must comply with this section. Check for *hidden* preexisting condition exclusion provisions. A hidden preexisting condition exclusion is not designated as a preexisting condition exclusion, but restricts benefits based on when a condition arose in relation to the effective date of coverage. ◆ If the plan imposes a hidden preexisting condition exclusion, the plan may violate many or all of the provisions discussed in this section. For example, if the plan excludes coverage for cosmetic surgery unless it is required by reason of an accidental injury occurring after the effective date of coverage, there could be multiple violations of this SECTION A. If the plan does not impose a preexisting condition exclusion period, including a *hidden* preexisting condition exclusion period, check "N/A" and skip to **SECTION B**			☐
Question 1 — Six-month look-back period **Does the plan comply with the 6-month look-back period requirement?** ..... ◆ A preexisting condition exclusion may apply only to conditions for which medical advice, diagnosis, care, or treatment was recommended or received during the 6-month period ending on an individual's "enrollment date." *See ERISA section 701(a)(1); 29 CFR 2590.701-3(a)(1)(i).* **Note: An individual's enrollment date is the earlier of – (1) the first day of coverage; or (2) the first day of any waiting period for coverage. (Waiting period means the period that must pass before an employee or dependent is eligible to enroll under the terms of the plan. If an employee or dependent enrolls as a late enrollee or special enrollee, any period before such enrollment date is not a waiting period.) Therefore, if the plan has a waiting period, the 6-month look-back period ends on the first day of the waiting period, not the first day of coverage.	☐	☐	

	YES	NO	N/A
Question 2 — 12/18-month look-forward period **Does the plan comply with HIPAA's 12-month (or 18-month) look-forward period requirement?** ..... ◆ The maximum preexisting condition exclusion period is 12 months (18 months for late enrollees), measured from an individual's enrollment date. *See ERISA section 701(a)(2); 29 CFR 2590.701-3(a)(1)(ii).* **Note: If the plan has a waiting period, the 12-month (or 18-month) look-forward period must begin on the first day of the waiting period, not the first day of coverage.	☐	☐	
Question 3 — Offsetting the length of preexisting condition exclusions by creditable coverage **Does the plan offset the length of its preexisting condition exclusion by an individual's creditable coverage?** ..... ◆ The length of the plan's preexisting condition exclusion must be offset by an individual's creditable coverage. However, days of coverage prior to a "significant break in coverage" are not required to be taken into account. Under Federal law, a significant break in coverage is a period of 63 days or more without any health coverage. *See ERISA section 701(a)(3); 29 CFR 2590.701-3(a)(1)(iii) [using ERISA section 701(c) rules for crediting previous coverage].*	☐	☐	
Question 4 — Preexisting condition exclusion on genetic information **Does the plan comply with HIPAA by not imposing a preexisting condition exclusion with respect to genetic information?** ..... ◆ Genetic information alone cannot be treated as a preexisting condition in the absence of a diagnosis of a condition related to such information. *See ERISA section 701(a)(1); 29 CFR 2590.701-3(a)(1)(i) [using ERISA section 701(b)(1) definition of a preexisting condition exclusion].*	☐	☐	
Question 5 — Preexisting condition exclusion on newborns **Does the plan comply with HIPAA by not imposing an impermissible preexisting condition exclusion on newborns?** ..... ◆ The plan generally may not impose a preexisting condition exclusion on a child who enrolls in creditable coverage within 30 days of birth. *See ERISA section 701(d)(1); 29 CFR 2590.701-3(b)(1).*	☐	☐	

	YES	NO	N/A
Question 6 — Preexisting condition exclusion on children adopted or placed for adoption **Does the plan comply with HIPAA by not imposing an impermissible preexisting condition exclusion on adopted children or children placed for adoption?** ..... ◆ The plan generally may not impose a preexisting condition exclusion on a child who enrolls in creditable coverage within 30 days of adoption or placement for adoption. *See ERISA section 701(d)(2); 29 CFR 2590.701-3(b)(2).*	☐	☐	
Question 7 — Preexisting condition exclusion on pregnancy **Does the plan comply with HIPAA by not imposing a preexisting condition exclusion on pregnancy?** ..... ◆ The plan may not impose a preexisting condition exclusion relating to pregnancy. *See ERISA section 701(d)(3); 29 CFR 2590.701-3(b)(4).*	☐	☐	
Question 8 — Adequate general notices of preexisting condition exclusions **Does the plan provide adequate general notices of preexisting condition exclusions?** ..... ◆ A group health plan (or issuer) may not impose a preexisting condition exclusion with respect to a participant or dependent before notifying the participant, in writing, of— ❖ The existence and terms of any preexisting condition exclusion under the plan; and ❖ The rights of individuals to demonstrate creditable coverage (and any applicable waiting periods), including (1) a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and (2) a statement that the current plan (or issuer) will assist in obtaining a certificate from any prior plan or issuer, if necessary. *See 29 CFR 2590.701-3(c).* Guidelines for the general notice of preexisting condition exclusion are available in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa.	☐	☐	
Question 9 — Adequate individual notices of preexisting condition exclusions **Does the plan provide adequate individual notices of preexisting condition exclusions?** ..... ◆ A group health plan (or issuer) seeking to impose a preexisting condition exclusion with respect to an individual must, within a reasonable time following receipt of creditable coverage information, make a determination about the individual's period of creditable coverage.	☐	☐	

	YES	NO	N/A
◆ If the individual does not have enough creditable coverage to completely offset the preexisting condition exclusion period, the plan must then provide, in writing, to the individual— ❖ Its determination of the length of any preexisting condition exclusion that applies to the individual, including the source and substance of any information on which the plan or issuer relied; and ❖ A written explanation of any appeal procedures established by the plan or issuer. The plan must also allow the individual a reasonable opportunity to submit additional evidence of creditable coverage. *See 29 CFR 2590.701-5(d)(2).* ◆ Guidelines for the individual notice of preexisting condition exclusion are available in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa.			
SECTION B — Compliance with the Certificate of Creditable Coverage Provisions A group health plan (or a group health insurance issuer, on the plan's behalf) must issue complete certificates of creditable coverage (free of charge) automatically to individuals whose coverage under the plan ends, and (free of charge) to individuals upon request. A model certificate that may be used to satisfy this notice requirement is available in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa. Check to see that the plan issues complete certificates of creditable coverage within the required time frames. ** Special Accountability Rule for Insured Plans: ◆ Under a special accountability rule in ERISA section 701(e)(1)(C) and 29 CFR 2590.701-5(a)(1)(iii), a health insurance issuer, rather than the plan, may be responsible for providing certificates of creditable coverage by virtue of an agreement between the two that makes the issuer responsible. In this case, the plan cannot be held accountable for a violation of Part 7. (**Note: An agreement with a third-party administrator (TPA) that is not insuring benefits will not transfer responsibility from the plan.) ◆ Despite this special accountability rule under Part 7, other responsibilities, such as a plan administrator's duty to monitor compliance with a contract, remain unaffected. Accordingly, this section of the checklist is organized differently to take into account this special accountability rule.			

	YES	NO	N/A
Question 10 — Automatic certificates of creditable coverage upon loss of coverage **Does the plan provide complete certificates of creditable coverage to individuals automatically upon loss of coverage?** ..... ◆ Plans are required to provide each participant and dependent covered under the plan a certificate, free of charge, when coverage ceases. ◆ If the plan is insured and there is an agreement with the issuer that the issuer is responsible for providing the certificates, check "N/A" and go to **Question 11.** ◆ To be complete, under 29 CFR 2590.701-5(a)(3)(ii), each certificate must include: 1. Date issued; 2. Name of plan; 3. The individual's name and identification information (**Note: Dependent information can be included on the same certificate with the participant information or on a separate certificate. The plan is required to have used reasonable efforts to get dependent information. *See 29 CFR 2590.701-5(a)(5)(i)*); 4. Plan administrator (or issuer) name, address, and telephone number; 5. Telephone number for further information (if different); and 6. Individual's creditable coverage information: ❖ Either — (1) that the individual has at least 18 months of creditable coverage; or (2) the date any waiting period (or affiliation period) began and the date creditable coverage began. ❖ Also, either — (1) the date creditable coverage ended; or (2) that creditable coverage is continuing. ❖ Automatic certificates of creditable coverage should reflect the last period of continuous coverage.	☐	☐	☐
Question 11 — Automatic certificate upon loss of coverage — *Issuer Responsibility* **If there is an agreement between the plan and the issuer stating that the issuer is responsible for providing certificates of creditable coverage, does the issuer provide complete certificates?** ..... ◆ Even if the plan is not responsible for issuing certificates of creditable coverage, the plan should monitor issuer compliance with the certification provisions. ◆ If the plan is self-insured, or if there is no such agreement between the plan and the issuer, check "N/A" and skip to **Question 12.**	☐	☐	☐

	YES	NO	N/A
Question 12 — Certificates of creditable coverage upon request **Does the plan provide complete certificates of creditable coverage upon request?** ..... ◆ If the plan is insured and the issuer is responsible for issuing certificates pursuant to an agreement, check "N/A" and go to **Question 13.** ◆ Certificates of creditable coverage must also be provided free of charge upon request to individuals while covered under the plan and for up to 24 months after coverage ends. *See ERISA section 701(e)(1)(A); 29 CFR 2590.701-5(a)(2)(iii).* ◆ Requested certificates of creditable coverage should reflect periods of continuous coverage that an individual had in the 24 months prior to the date of the request (up to 18 months of creditable coverage). *See 29 CFR 2590.701-5(a)(3)(iii).* ◆ The plan should also have a procedure for individuals to request and receive certificates of creditable coverage. *See 29 CFR 2590.701-5(a)(4)(ii).*	☐	☐	☐
Question 13 — Certificates upon request—*Issuer Responsibility* **If the plan is insured and there is an agreement between the plan and the issuer stating that the issuer is responsible for providing certificates of creditable coverage, does the issuer provide complete certificates?** ..... ◆ Even if the plan is not responsible for issuing certificates of creditable coverage, the plan should monitor issuer compliance with the certification provisions. ◆ If the plan is self-insured, or if there is no such agreement between the plan and the issuer, check "N/A" and skip to **Question 14.**	☐	☐	☐
Question 14 — Certificates within required time frames **If the plan issues certificates of creditable coverage, are they issued within the required time frames?** ..... ◆ If the plan is insured and the issuer is responsible for issuing certificates pursuant to an agreement, check "N/A" and go to **Question 15.** ◆ Under 29 CFR 2590.701-5(a)(2)(ii), plans and issuers must furnish an automatic certificate of creditable coverage: ❖ To an individual who is entitled to elect COBRA, at a time no later than when a notice is required to be provided for a qualifying event under COBRA (usually not more than 44 days); ❖ To an individual who loses coverage under the plan and who is not entitled to elect COBRA, within a reasonable time after coverage ceases; and ❖ To an individual who ceases COBRA, within a reasonable time after the plan learns that COBRA has ceased.	☐	☐	☐

	YES	NO	N/A
◆ Plans and issuers must also generally provide a certificate of creditable coverage upon request, at the earliest time that a plan or issuer, acting in a reasonable and prompt fashion, can provide the certificate of creditable coverage. *See 29 CFR 2590.701-5(a)(2)(iii).*			
Question 15 — Certificates within required time frames — *Issuer Responsibility* **If the plan is insured and there is an agreement with the issuer stating that the issuer is responsible for providing certificates of creditable coverage, are those certificates being provided timely?** ..... ◆ Even if the plan is not responsible for issuing certificates of creditable coverage, the plan should monitor issuer compliance with the certification provisions. ◆ If the plan is self-insured, or if there is no such agreement between the plan and the issuer, check "N/A" and skip to **SECTION C.**	☐	☐	☐
SECTION C — Compliance with the Special Enrollment Provisions Group health plans must allow individuals (who are otherwise eligible) to enroll upon certain specified events, if enrollment is requested within 30 days of the event. The plan must provide for special enrollment, as follows:			
Question 16 — Special enrollment upon loss of other coverage **Does the plan provide special enrollment upon loss of other coverage? (The plan must comply with *all* of the following.)** ..... ◆ Plans must permit loss-of-coverage special enrollment upon: (1) loss of eligibility for group health plan coverage or health insurance coverage; **and** (2) termination of employer contributions toward coverage. *See ERISA section 701(f)(1); 29 CFR 2590.701-6(a).* ◆ Plans must permit eligible employees and dependents to special enroll because of a loss of eligibility (other than loss due to failure to pay premiums or termination of coverage for cause -- such as for fraud). ❖ Examples of reasons for loss of eligibility include: legal separation, divorce, death, termination of employment - voluntary or involuntary (with or without electing COBRA), exhaustion of COBRA, reduction in hours, "aging out" under other parent's coverage, or moving out of an HMO's service area. ◆ Plans must permit eligible employees and dependents to special enroll due to termination of employer contributions towards the other coverage whether or not they also lost the other coverage as a result. ◆ Coverage must become effective no later than the first day of the first month following a completed request for enrollment. *See 29 CFR 2590.701-6(a)(7).*	☐	☐	

	YES	NO	N/A
Question 17 — Dependent special enrollment **Does the plan provide special enrollment rights to individuals upon marriage, birth, adoption, and placement for adoption? (The plan must comply with *all* of the following.)** ..... ◆ Plans must permit employees, spouses, **and** new dependents to enroll upon marriage, birth, adoption, and placement for adoption. *See ERISA section 701(f)(2); 29 CFR 2590.701-6(b).* ◆ In the case of marriage, coverage must become effective not later than the first day of the month following a completed request for enrollment. *See 29 CFR 2590.701-6(b)(8)(i).* ◆ In the case of birth, adoption, or placement for adoption, coverage must become effective as of the date of the birth, adoption, or placement for adoption. *See 29 CFR 2590.701-6(b)(8)(ii) and (iii).*	☐	☐	
Question 18 — Notice of special enrollment rights **Does the plan provide notices of special enrollment rights?** ..... ◆ On or before the time an employee is offered the opportunity to enroll in the plan, the plan must provide the employee with a description of the plan's special enrollment rules. ◆ A model description of special enrollment rights is available at 29 CFR 2590.701-6(c) and in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa.	☐	☐	
SECTION D — Compliance with the HIPAA Nondiscrimination Provisions Overview. HIPAA prohibits group health plans and health insurance issuers from discriminating against individuals in eligibility and continued eligibility for benefits and in individual premium or contribution rates based on health factors. These health factors include: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence and participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities), and disability. *See ERISA section 702; 29 CFR 2590.702.* Similarly Situated Individuals. It is important to recognize that the nondiscrimination rules prohibit discrimination within a group of similarly situated individuals. Under 29 CFR 2590.702(d), plans may treat distinct groups of similarly situated individuals differently, if the distinctions between or among the groups are not based on a health factor. If distinguishing among groups of participants, plans and issuers must base distinctions on bona fide employment-based classifications			

	YES	NO	N/A
consistent with the employer's usual business practice. Whether an employment-based classification is bona fide is based on relevant facts and circumstances, such as whether the employer uses the classification for purposes independent of qualification for health coverage. Bona fide employment-based classifications might include: full-time versus part-time employee status; different geographic location; membership in a collective bargaining unit; date of hire or length of service; or differing occupations. In addition, plans may treat participants and beneficiaries as two separate groups of similarly situated individuals. Plans may also distinguish among beneficiaries. Distinctions among groups of beneficiaries may be based on bona fide employment-based classifications of the participant through whom the beneficiary is receiving coverage, relationship to the participant (such as spouse or dependent), marital status, age or student status of dependent children, or any other factor that is not a health factor. Benign Discrimination. The nondiscrimination rules do not prohibit a plan from establishing more favorable rules for eligibility or premium rates for individuals with an adverse health factor, such as a disability. *See 29 CFR 2590.702(g).* Check to see that the plan complies with HIPAA's nondiscrimination provisions as follows:			
Question 19 — Nondiscrimination in rules for eligibility **Does the plan allow individuals eligibility and continued eligibility under the plan regardless of any adverse health factor?** ..... ◆ Examples of plan provisions that violate ERISA section 702(a) because they discriminate in eligibility based on a health factor include - ❖ Plan provisions that require "evidence of insurability," such as passing a physical exam, providing a certification of good health, or demonstrating good health through answers to a health care questionnaire in order to enroll. (This is a violation, even if the plan provision is imposed only at late enrollment.) ◆ Also, note that it may be permissible for plans to require individuals to complete physical exams or health care questionnaires for purposes other than for determining eligibility to enroll in the plan, such as for determining an appropriate blended, aggregate group rate for providing coverage to the plan as a whole.	☐	☐	
Question 20 — Benefit restrictions **Does the plan uniformly provide benefits to participants and beneficiaries?** ..... ◆ A plan is not required to provide any benefits, but benefits provided must be uniformly available and any benefit restrictions must be applied uniformly to all similarly situated individuals and cannot be directed at any individual participants or beneficiaries based on a health factor. If benefit exclusions or limitations are applied only to certain individuals based on a health factor, this would violate ERISA section 702(a) and 29 CFR 2590.702(b)(2).	☐	☐	

	YES	NO	N/A
◆ Examples of plan provisions that would be permissible under ERISA section 702(a) include - ❖ A lifetime or annual limit on all benefits, ❖ A lifetime or annual limit on the treatment of a particular condition, ❖ Limits or exclusions for certain types of treatments or drugs, ❖ Limitations based on medical necessity or experimental treatment, and ❖ Cost-sharing, if the limit applies uniformly to all similarly situated individuals and is not directed at individual participants or beneficiaries based on a health factor. ◆ A plan amendment applicable to all similarly situated individuals and made effective no earlier than the first day of the next plan year is not considered directed at individual participants and beneficiaries. *See 29 CFR 2590.702(b)(2)(i)(C).*			
Question 21 — Source-of-injury restrictions **If the plan imposes a source-of-injury restriction, does it comply with the HIPAA nondiscrimination provisions?** ..... ◆ Plans may exclude benefits for the treatment of certain injuries based on the source of that injury, except that plans may not exclude benefits otherwise provided for treatment of an injury if the injury results from an act of domestic violence or a medical condition. *See 29 CFR 2590.702(b)(2)(iii).* An example of a permissible source-of-injury exclusion would include - ❖ A plan provision that provides benefits for head injuries generally, but excludes benefits for head injuries sustained while participating in bungee jumping, as long as the injuries do not result from a medical condition or domestic violence. ◆ An impermissible source-of-injury exclusion would include - ❖ A plan provision that generally provides benefits for medical/surgical benefits, including hospital stays that are medically necessary, but excludes benefits for self-inflicted injuries or attempted suicide. This is impermissible because the plan provision excludes benefits for treatment of injuries that may result from a medical condition (such as depression). ◆ If the plan does not impose a source-of-injury restriction, check "N/A" and skip to **Question 22.**	☐	☐	☐
Question 22 — Nondiscrimination in premiums or contributions **Does the plan comply with HIPAA's nondiscrimination rules regarding individual premium or contribution rates?** ..... ◆ Under ERISA section 702(b) and 29 CFR 2590.702(c), plans may not require an individual to pay a premium or contribution that is greater than a premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor. For example, it would be impermissible for a plan to require	☐	☐	

	YES	NO	N/A
certain full-time employees to pay a higher premium than other full-time employees based on their prior claims experience. ◆ Nonetheless, the nondiscrimination rules do not prohibit a plan from providing a reward based on adherence to a bona fide wellness program. *See ERISA section 702(b)(2)(B); 29 CFR 2590.702(c)(3).* Proposed rules describing bona fide wellness programs were published on January 8, 2001 at 66 FR 1421. Essentially, these proposed rules permit rewards that are not contingent on an individual meeting a standard related to a health factor. In addition, these proposed rules permit rewards that are contingent on an individual meeting a standard related to a health factor if: ❖ The reward does not exceed a specified percentage of the total employee-only premium. (Comments were invited as to whether a 10%, 15%, or 20% limitation might be appropriate.) ❖ The program is reasonably designed to promote good health or prevent disease. (For this purpose, a program must allow individuals an opportunity to qualify for the reward at least once each year.) ❖ The reward is available to all similarly situated individuals. In particular, the program must allow a reasonable alternative standard for individuals for whom it is unreasonably difficult due to a medical condition to satisfy the original program standard or for whom it is medically inadvisable to attempt to satisfy the original program standard during that time period. ❖ The plan must also disclose the availability of a reasonable alternative standard in all plan materials describing the terms of the program.			
Question 23 — List billing **Is there compliance with the list billing provisions?** ..... ◆ Under 29 CFR 2590.702(c)(2)(ii), plans and issuers may not charge or quote an employer a different premium for an individual in a group of similarly situated individuals based on a health factor. This practice is commonly referred to as list billing. If an issuer is list billing an employer and the plan is passing the separate and different rates on to the individual participants and beneficiaries, both the plan and the issuer are violating the prohibition against discrimination in premium rates. This does not prevent plans and issuers from taking the health factors of each individual into account in establishing a blended/aggregate rate for providing coverage to the plan.	☐	☐	
Question 24 — Nonconfinement clauses **Is the plan free of any nonconfinement clauses?** ..... ◆ Typically, a nonconfinement clause will deny or delay eligibility for some or all benefits if an individual is confined to a hospital or other health care institution. Sometimes nonconfinement clauses also deny or delay eligibility if an individual cannot perform ordinary life activities. Often a nonconfinement clause is imposed only with respect to dependents, but they may also be imposed with respect to employees. 29 CFR 2590.702(e)(1) explains that these nonconfinement clauses	☐	☐	

	YES	NO	N/A
violate ERISA sections 702(a) (if the clause delays or denies eligibility) and 702(b) (if the clause raises individual premiums).			
Question 25 — Actively-at-work clauses **Is the plan free of any impermissible actively-at-work clauses?** ..... ◆ Typically, actively-at-work provisions delay eligibility for benefits based on an individual being absent from work. 29 CFR 2590.702(e)(2) explains that actively-at-work provisions generally violate ERISA sections 702(a) (if the clause delays or denies eligibility) and 702(b) (if the clause raises individual premiums or contributions), unless absence from work due to a health factor is treated, for purposes of the plan, as if the individual is at work. Nonetheless, an exception provides that a plan may establish a rule for eligibility that requires an individual to begin work for the employer sponsoring the plan before eligibility commences. Further, plans may establish rules for eligibility or set any individual's premium or contribution rate in accordance with the rules relating to similarly situated individuals in 29 CFR 2590.702(d). For example, a plan that treats full-time and part-time employees differently for other employment-based purposes, such as eligibility for other employee benefits, may distinguish in rules for eligibility under the plan between full-time and part-time employees.	☐	☐	
SECTION E — Compliance with the HMO Affiliation Period Provisions If the plan provides benefits through an HMO and imposes an HMO affiliation period in lieu of a preexisting condition exclusion period, answer **Question 26.** If the plan does not provide benefits through an HMO, or if there is no HMO affiliation period, check "N/A" and go to **Section F.**			☐
Question 26 — HMO affiliation period provisions **Does the plan comply with the limits on HMO affiliation periods?** ..... ◆ An affiliation period is a period of time that must expire before health insurance coverage provided by an HMO becomes effective and during which the HMO is not required to provide benefits. ◆ A group health plan offering coverage through an HMO may impose an affiliation period only if— ❖ No preexisting condition exclusion is imposed; ❖ No premium is charged to a participant or beneficiary for the affiliation period; ❖ The affiliation period is applied uniformly without regard to any health factor; ❖ The affiliation period does not exceed 2 months (or 3 months for late enrollees); ❖ The affiliation period begins on an individual's "enrollment date;" and ❖ The affiliation period runs concurrently with any waiting period. *See ERISA section 701(g); 29 CFR 2590.701-7.*	☐	☐	

	YES	NO	N/A
SECTION F — Compliance with the MEWA or Multiemployer Plan Guaranteed Renewability Provisions If the plan is a multiple employer welfare arrangement (MEWA) or a multiemployer plan, it is required to provide guaranteed renewability of coverage in accordance with ERISA section 703. If the plan is a MEWA or multiemployer plan, it must comply with Question 27. If the plan is not a MEWA or multiemployer plan, check "N/A" and go to **Part II** of this checklist.			☐
Question 27 — Multiemployer plan and MEWA guaranteed renewability **If the plan is a multiemployer plan, or a MEWA, does the plan provide guaranteed renewability?** ◆ Group health plans that are multiemployer plans or MEWAs may not deny an employer continued access to the same or different coverage, other than— ❖ For nonpayment of contributions; ❖ For fraud or other intentional misrepresentation by the employer; ❖ For noncompliance with material plan provisions; ❖ Because the plan is ceasing to offer coverage in a geographic area; ❖ In the case of a plan that offers benefits through a network plan, there is no longer any individual enrolled through the employer who lives, resides or works in the service area of the network plan and the plan applies this paragraph uniformly without regard to the claims experience of employers or any health-related factor in relation to such individuals or dependents; or ❖ For failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such agreement. *See ERISA section 703.* **Note: The PHS Act contains different guaranteed renewability requirements for issuers. For more information, see PHS Act section 2712.	☐	☐	

II. Determining Compliance with the MHPA Provisions in Part 7 of ERISA			
If you answer "No" to any of the questions below, the group health plan is in violation of the MHPA provisions in Part 7 of ERISA.			
	YES	NO	N/A
If the plan provides both mental health and medical/surgical benefits, the plan may be subject to MHPA. If this is the case, answer **Questions 28-32.** If the plan does not provide mental health benefits, check "N/A" here and skip to **Part III** of this checklist. Also, the plan may be exempt from MHPA under the small employer (50 employees or fewer) exception or the increased cost exception. (To be eligible for the increased cost exception, the plan must have filed with EBSA and notified participants and beneficiaries.) If the plan is exempt, check "N/A" here and skip to **Part III** of this checklist			☐
Question 28 — Lifetime dollar limit **Does the plan comply with MHPA's rules for lifetime dollar limits on mental health benefits (excluding constructive dollar limits)?** ..... ◆ A plan may not impose a lifetime dollar limit on mental health benefits that is lower than the lifetime dollar limit imposed on medical/surgical benefits. *See ERISA section 712; 29 CFR 2590.712.* (Only limits on what the plan is willing to pay are taken into account. A plan may impose annual dollar out-of-pocket limits on participants and beneficiaries without implicating MHPA.) ** Note: Limits on out-of-network mental health benefits may be lower than limits on medical/surgical benefits if limits on in-network mental health benefits are unlimited, or in parity with medical/surgical limits. *See 29 CFR 2590.712(b)(4), Example 3.* But, limits on inpatient and outpatient mental health benefits must separately be in parity with limits on medical/surgical benefits. *See 29 CFR 2590.712(b)(4), Example 2.*	☐	☐	
Question 29 — Constructive lifetime dollar limit **If the plan imposes a "constructive lifetime dollar limit" on mental health benefits (see explanation and examples below), is the limit *greater than or equal to* that imposed on medical/surgical benefits?** ..... ◆ A lifetime visit limit that is coupled with a maximum dollar amount payable by the plan per visit is, in effect, a lifetime dollar limit. This is referred to as a constructive lifetime dollar limit. ◆ For example, a 100-visit lifetime limit on mental health benefits that is payable to a maximum of $40 per visit is a constructive lifetime dollar limit of $4,000 on mental health benefits. If this limit is less than the limit for medical/surgical benefits (or if there is no limit for medical/surgical benefits), the plan is not in compliance with MHPA.	☐	☐	

	YES	NO	N/A
◆ Again, remember only limits on what the plan is willing to pay are taken into account.			
Question 30 — Annual dollar limit **Does the plan comply with MHPA's rules for annual dollar limits on mental health benefits (excluding constructive dollar limits)?** ..... ◆ A plan may not impose an annual dollar limit on mental health benefits that is lower than the annual dollar limit imposed on medical/surgical benefits. *See ERISA section 712; 29 CFR 2590.712.* ** Note: Limits on out-of-network mental health benefits may be lower than limits on medical/surgical benefits if limits on in-network mental health benefits are unlimited, or in parity with medical/surgical limits. *See 29 CFR 2590.712(b)(4), Example 3.* But, limits on inpatient and outpatient mental health benefits must separately be in parity with limits on medical/surgical benefits. *See 29 CFR 2590.712(b)(4), Example 2.* ◆ Remember only limits on what the plan is willing to pay are taken into account. A plan may impose annual dollar out-of-pocket limit on participants and beneficiaries without implicating MHPA.	☐	☐	
Question 31 — Constructive annual dollar limit **If the plan imposes a "constructive annual dollar limit" on mental health benefits, is the limit *greater than or equal to* that imposed on medical/surgical benefits?** ..... ◆ An annual visit limit that is coupled with a maximum dollar amount payable by the plan per visit is, in effect, an annual dollar limit. This is referred to as a constructive annual dollar limit. ◆ Again, remember only limits on what the plan is willing to pay are taken into account.	☐	☐	
Question 32 — Substance abuse dollars counting against mental health dollar limit **Does the plan *exclude* substance abuse or chemical dependency benefits from its definition of "mental health benefits?"** ..... ◆ If the plan does not impose any explicit or constructive annual or lifetime dollar limits on mental health benefits, check "N/A" and skip to **Part III** of this checklist.	☐	☐	☐

	YES	NO	N/A
◆ If the plan imposes any explicit or constructive annual or lifetime dollar limit on mental health benefits, the plan must not count benefits for substance abuse or chemical dependency against the mental health dollar limit. Instead, benefits for substance abuse and chemical dependency can be counted against a medical/surgical cap, or a separate substance abuse or chemical dependency cap. *See 29 CFR 2590.712(b)(4), Example 4 [using ERISA section 712(e)(4) definition of mental health benefits].*			

III. Determining Compliance with the Newborns' Act Provisions in Part 7 of ERISA			
If you answer "No" to any of the questions below, the group health plan is in violation of the Newborns' Act provisions in Part 7 of ERISA.			
	YES	**NO**	**N/A**
SECTION A — Newborns' Act Substantive Provisions The substantive provisions of the Newborns' Act apply only to certain plans, as follows: If the plan does not provide benefits for hospital stays in connection with childbirth, check "N/A" and go to **Part IV** of this checklist. (Note: Under the Pregnancy Discrimination Act, most plans are required to cover maternity benefits.)			☐
Special applicability rule for *insured coverage* that provides benefits for hospital stays in connection with childbirth: If the plan provides benefits for hospital stays in connection with childbirth and is insured, whether the plan is subject to the Newborns' Act depends on State law. Based on a preliminary review of State laws as of July 1, 2002, if the coverage is in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, or Wyoming, it appears that State law applies in lieu of the Federal Newborns' Act. If this is the case, check "N/A" and skip to **SECTION B**			☐
If the plan provides benefits for hospital stays in connection with childbirth, the plan is insured, and the coverage is in Wisconsin, Puerto Rico, the Virgin Islands, American Samoa, Wake Island, or the Northern Mariana Islands, it appears that the Federal Newborns' Act applies to the plan. If this is the case, answer **Questions 33-36.** *Self-insured* coverage that provides benefits for hospital stays in connection with childbirth: If the plan provides benefits for hospital stays in connection with childbirth and is *self-insured*, the Federal Newborns' Act applies. Answer **Questions 33-36.**			
Question 33 — General 48/96-hour stay rule **Does the plan comply with the general 48/96-hour rule?** ..... ◆ Plans generally may not restrict benefits for a hospital length of stay in connection with childbirth to less than 48 hours in the case of a vaginal delivery *(see ERISA section 711(a)(1)(A)(i))*, or less than 96 hours in the case of a cesarean section (*see ERISA section 711(a)(1)(A)(ii)*).	☐	☐	

	YES	NO	N/A
◆ Therefore, the plan cannot deny a mother or her newborn benefits for a 48/96-hour stay based on medical necessity. (A plan may require a mother to notify the plan of a pregnancy to obtain more favorable cost-sharing for the hospital stay. This second type of plan provision is permissible under the Newborns' Act if the cost-sharing is consistent throughout the 48/96-hour stay.) ◆ An attending provider may, however, decide, in consultation with the mother, to discharge the mother or newborn earlier.			
Question 34 — Provider must not be required to obtain authorization from plan **Does the plan defer to the provider for a decision on hospital length of stay within the first 48/96-hour period?** ..... ◆ Plans may not require that a provider (such as a doctor) obtain authorization from the plan to prescribe a 48/96-hour stay. *See ERISA section 711(a)(1)(B); 29 CFR 2590.711(a)(4).*	☐	☐	
Question 35 — Incentives/penalties to mothers or providers **Does the plan comply with the Newborns' Act by avoiding impermissible incentives or penalties with respect to mothers or attending providers?** ..... ◆ Penalties to attending providers to discourage 48/96-hour stays violate ERISA section 711(b)(3) and 29 CFR 2590.711(b)(3)(i). ◆ Incentives to attending providers to encourage early discharges violate ERISA section 711(b)(4) and 29 CFR 2590.711(b)(3)(ii). ◆ Penalties imposed on mothers to discourage 48/96-hour stays violate ERISA section 711(b)(1) and 29 CFR 2590.711(b)(1)(i)(A). ◆ Incentives to mothers to encourage early discharges violate ERISA section 711(b)(2) and 29 CFR 2590.711(b)(1)(i)(B). ❖ An example of this would be if the plan waived the mother's co-payment or deductible if mother or newborn leaves within 24 hours. ◆ Benefits and cost-sharing may not be less favorable for the latter portion of any 48/96-hour hospital stay. In this case less favorable benefits would violate ERISA section 711(b)(5) and 29 CFR 2590.711(b)(2) and less favorable cost-sharing would violate ERISA section 711(c)(3) and 29 CFR 2590.711(c)(3).	☐	☐	

	YES	NO	N/A
SECTION B — Disclosure Provisions Group health plans that provide benefits for hospital stays in connection with childbirth are required to make certain disclosures, as follows:			
Question 36 — Disclosure with respect to hospital lengths of stay in connection with childbirth **Does the plan comply with the notice provisions relating to hospital stays in connection with childbirth?** ..... ◆ Group health plans that provide benefits for hospital stays in connection with childbirth are required to make certain disclosures. *See the Summary Plan Description (SPD) content regulations at 29 CFR 2520.102-3(u).* ◆ Model language for the Newborns' Act disclosure requirement is available in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa.	☐	☐	

IV. Determining Compliance with the WHCRA Provisions in Part 7 of ERISA			
If you answer "No" to any of the questions below, the group health plan is in violation of the WHCRA provisions in Part 7 of ERISA.			
	YES	**NO**	**N/A**
WHCRA applies only to plans that offer benefits with respect to a mastectomy. If the plan does not offer these benefits, check "N/A" and you are finished with this checklist..... If the plan does offer benefits with respect to a mastectomy, answer **Questions 37-40.**			☐
Question 37 — Four required coverages under WHCRA **Does the plan provide the four coverages required by WHCRA?** ..... ◆ In the case of a participant or beneficiary who is receiving benefits in connection with a mastectomy, the plan shall provide coverage for the following benefits for individuals who elect them — ❖ All stages of reconstruction of the breast on which the mastectomy has been performed; ❖ Surgery and reconstruction of the other breast to produce a symmetrical appearance; ❖ Prostheses; and ❖ Treatment of physical complications of mastectomy, including lymphedemas, in a manner determined in consultation with the attending provider and the patient. *See ERISA section 713(a).* ◆ These required coverages can be subject to annual deductibles and coinsurance provisions if consistent with those established for other benefits under the plan or coverage.	☐	☐	
Question 38 — Annual notice **Does the plan provide annual notices as required by WHCRA?** ..... ◆ Plans must provide notices describing the benefits required under WHCRA upon enrollment in the plan and annually thereafter. *See ERISA section 713(a).* ◆ The annual notice must include— ❖ Information on the availability of benefits under the plan for the treatment of mastectomy-related services, including benefits for reconstructive surgery, surgery to achieve symmetry between the breasts, prostheses, and physical complications resulting from mastectomy (including lymphedemas); and ❖ Information (telephone number, Web address, etc.) on how to obtain a detailed description of the mastectomy-related benefits available under the plan.	☐	☐	

	YES	NO	N/A
◆ Model language for WHCRA's annual notice requirement is available in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa.			
Question 39 — Enrollment notice **Does the plan provide enrollment notices as required by WHCRA?** ..... ◆ Plans must provide notices describing the benefits required under WHCRA upon enrollment in the plan and annually thereafter. *See ERISA section 713(a).* ◆ The enrollment notice must describe the benefits that WHCRA requires the group health plan to cover. Additionally, the enrollment notice must describe any deductibles and coinsurance limitations applicable to such coverage. (Under WHCRA, coverage of the required benefits may be subject only to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.) ◆ Model language for WHCRA's enrollment notice requirement is available in EBSA's publication, ***Compliance Assistance Guide: Recent Changes in Health Care Law,*** which is located in the Compliance Assistance section of the agency's Web site at www.dol.gov/ebsa.	☐	☐	
Question 40 — Incentive provisions **Does the plan comply with WHCRA by not providing impermissible incentives or penalties with respect to patients or attending providers?** ..... ◆ A plan may not deny a patient eligibility to enroll or renew coverage solely to avoid WHCRA's requirements under ERISA section 713(c)(1). ◆ In addition, under ERISA section 713(c)(2), a plan may not penalize or offer incentives to an attending provider to induce the provider to furnish care in a manner inconsistent with WHCRA.	☐	☐	

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Federal Register

Tuesday,
December 21, 2004

Part IV

The President

Presidential Determination No. 2005–11 of December 10, 2004—Renewal of Trade Agreement With the Socialist Republic of Vietnam

Federal Register
Vol. 69, No. 244
Tuesday, December 21, 2004

Presidential Documents

Title 3—

The President

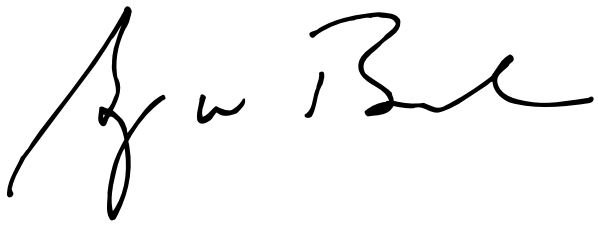
Presidential Determination No. 2005–11 of December 10, 2004

Renewal of Trade Agreement with the Socialist Republic of Vietnam

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)(B)), I have determined that actual or foreseeable reductions in U.S. tariffs and nontariff barriers to trade resulting from multilateral negotiations are being satisfactorily reciprocated by the Socialist Republic of Vietnam. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the Socialist Republic of Vietnam.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 10, 2004.

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Tuesday,
December 21, 2004

Part V

The President

Executive Order 13366—Committee on Ocean Policy

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Tuesday, December 21, 2004

Presidential Documents

Title 3—

The President

Executive Order 13366 of December 17, 2004

Committee on Ocean Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the United States to:

(a) coordinate the activities of executive departments and agencies regarding ocean-related matters in an integrated and effective manner to advance the environmental, economic, and security interests of present and future generations of Americans; and

(b) facilitate, as appropriate, coordination and consultation regarding ocean-related matters among Federal, State, tribal, local governments, the private sector, foreign governments, and international organizations.

Sec. 2. *Definition.* For purposes of this order the term ''ocean-related matters'' means matters involving the oceans, the Great Lakes, the coasts of the United States (including its territories and possessions), and related seabed, subsoil, and natural resources.

Sec. 3. *Establishment of Committee on Ocean Policy.*

(a) There is hereby established, as a part of the Council on Environmental Quality and for administrative purposes only, the Committee on Ocean Policy (Committee).

(b) The Committee shall consist exclusively of the following:

(i) the Chairman of the Council on Environmental Quality, who shall be the Chairman of the Committee;

(ii) the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Administrator of the National Aeronautics and Space Administration, the Director of National Intelligence, the Director of the Office of Science and Technology Policy, the Director of the National Science Foundation, and the Chairman of the Joint Chiefs of Staff;

(iii) the Assistants to the President for National Security Affairs, Homeland Security, Domestic Policy, and Economic Policy;

(iv) an employee of the United States designated by the Vice President; and

(v) such other officers or employees of the United States as the Chairman of the Committee may from time to time designate.

(c) The Chairman of the Committee, after coordination with the Assistants to the President for National Security Affairs and Homeland Security, shall regularly convene and preside at meetings of the Committee, determine its agenda, direct its work, and, as appropriate to deal with particular subject matters, establish and direct subcommittees of the Committee that shall consist exclusively of members of the Committee. The Committee shall coordinate its advice in a timely fashion.

(d) A member of the Committee may designate, to perform the Committee or subcommittee functions of the member, any person who is within such member's department, agency, or office and who is (i) an officer of the United States appointed by the President, (ii) a member of the Senior Executive Service or the Senior Intelligence Service, (iii) an officer or employee

within the Executive Office of the President, or (iv) an employee of the Vice President.

(e) Consistent with applicable law and subject to the availability of appropriations, the Council on Environmental Quality shall provide the funding, including through the Office of Environmental Quality as permitted by law and as appropriate, and administrative support for the Committee necessary to implement this order.

Sec. 4. *Functions of the Committee.* To implement the policy set forth in section 1 of this order, the Committee shall:

(a) provide advice on establishment or implementation of policies concerning ocean-related matters to:

(i) the President; and

(ii) the heads of executive departments and agencies from time to time as appropriate;

(b) obtain information and advice concerning ocean-related matters from:

(i) State, local, and tribal elected and appointed officials in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation; and

(ii) representatives of private entities or other individuals in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation;

(c) at the request of the head of any department or agency who is a member of the Committee, unless the Chairman of the Committee declines the request, promptly review and provide advice on a policy or policy implementation action on ocean-related matters proposed by that department or agency;

(d) provide and obtain information and advice to facilitate:

(i) development and implementation of common principles and goals for the conduct of governmental activities on ocean-related matters;

(ii) voluntary regional approaches with respect to ocean-related matters;

(iii) use of science in establishment of policy on ocean-related matters; and

(iv) collection, development, dissemination, and exchange of information on ocean-related matters; and

(e) ensure coordinated government development and implementation of the ocean component of the Global Earth Observation System of Systems.

Sec. 5. *Cooperation.* To the extent permitted by law and applicable presidential guidance, executive departments and agencies shall provide the Committee such information, support, and assistance as the Committee, through the Chairman, may request.

Sec. 6. *Coordination.* The Chairman of the Council on Environmental Quality, the Assistant to the President for National Security Affairs, the Assistant to the President for Homeland Security, and, with respect to the interagency task force established by Executive Order 13340 of May 18, 2004, the Administrator of the Environmental Protection Agency, shall ensure appropriate coordination of the activities of the Committee under this order and other policy coordination structures relating to ocean or maritime issues pursuant to Presidential guidance.

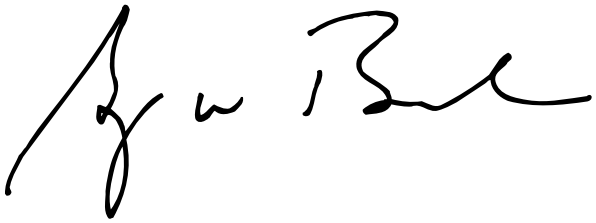
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a executive department or agency or the head thereof; or

(ii) functions assigned by the President to the National Security Council or Homeland Security Council (including subordinate bodies) relating to matters affecting foreign affairs, national security, homeland security, or intelligence.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
December 17, 2004.

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National consensus standards and industry standards; clarification and deletion of outdated references; comments due by 12-27-04; published 11-24-04 [FR 04-26045]
National consensus standards; update; comments due by 12-27-04; published 11-24-04 [FR 04-26047]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4012/P.L. 108–457

To amend the District of Columbia College Access Act of 1999 to reauthorize for 2 additional years the public school and private school tuition assistance programs established under the Act. (Dec. 17, 2004; 118 Stat. 3637)

S. 2845/P.L. 108–458

Intelligence Reform and Terrorism Prevention Act of 2004 (Dec. 17, 2004; 118 Stat. 3638)

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